

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

IN RE: M. CHILDREN : APPEAL NO. C-180118
: TRIAL NO. F15-1492Z
: *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.*

The mother of S.M.1, K.M., and S.M.2 appeals from the juvenile court's entry granting permanent custody of her children to the Hamilton County Department of Job and Family Services ("HCJFS"). The children's guardian ad litem and HCJFS ask this court to affirm the juvenile court's judgment.

S.M.1, K.M., and S.M.2 first came into the care of HCJFS in June 2015 when mother contacted the agency and requested help after informing HCJFS that she could no longer care for them. The children remained in the temporary custody of HCJFS until December 2016, when legal custody was awarded to their maternal grandmother. Two months later, in February 2017, maternal grandmother contacted HCJFS and informed the agency that she was no longer able to care for the children. HCJFS then filed a complaint seeking permanent custody of the children. Following a hearing, a juvenile court magistrate granted permanent custody to HCJFS. The trial court overruled objections filed by mother and father to the magistrate's decision, and it adopted the decision as its own.

In a single assignment of error, mother argues that the juvenile court's grant of permanent custody was not based on sufficient evidence and was against the manifest weight of the evidence.

Under former R.C. 2151.353(A)(4),¹ after a child is adjudicated abused, neglected, or dependent, the juvenile court may commit the child to the permanent custody of a children services agency if it determines under R.C. 2151.414(E) that the child cannot or should not be placed with one of the child's parents within a reasonable time, and it determines that permanent custody is in the best interest of the child in accordance with R.C. 2151.414(D)(1). The findings required by former R.C. 2151.353(A)(4) must be supported by clear and convincing evidence. *In re Kh.M.*, 6th Dist. Lucas Nos. L-16-1199 and L-16-1223, 2017-Ohio-8706, ¶ 21.

When reviewing the sufficiency of the evidence, we must examine the record to determine if the juvenile court had sufficient evidence before it to satisfy the clear-and-convincing standard. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 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 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 trial court determined, in accordance with R.C. 2151.414(E)(1) and (E)(4), that the children could not or should not be returned to

¹ 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.

their parents' care because neither parent had remedied the conditions that led to the children's removal from their home, and because both mother and father had demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with them. The juvenile court additionally determined in accordance with R.C. 2151.414(D)(1) that a grant of permanent custody was in the children's best interest.

The juvenile court's findings under R.C. 2151.414(E) were supported by competent and credible evidence. Mother had completed a diagnostic assessment, which recommended that she receive individual therapy, medication somatics, and transitional case management. Mother attended medication somatic services. But she failed to participate in individual therapy to address her mental-health issues, lied about attending therapy, and failed to attend appointments regarding transitional case management. Mother and father had a history of domestic violence, and father was incarcerated for a lengthy period of time during the pendency of this action. Mother attended several Women Helping Women classes but failed to internalize what she learned and appeared to lack insight. On the first overnight visit that mother had been allowed to have with the children, she took them to visit father in jail. Mother was able to obtain employment, but she was not able to maintain that employment. S.M.1 and K.M. both suffer from anxiety and have attachment issues. Mother had difficulty managing all three children during visitation, and would respond to a tantrum thrown by one of her children by laughing and walking away.

Father was incarcerated for a lengthy period of time while this case was pending. He eventually completed a diagnostic assessment approximately six months after the children first came into the custody of HCJFS, but he failed to comply with any of the services recommended and has not visited with the children.

The trial court's finding under R.C. 2151.414(D)(1) that a grant of permanent custody was in the children's best interest was also supported by competent and credible evidence. The children had been out of their mother's care for approximately 20 months at the time that the motion for permanent custody was filed. While mother visited regularly with the children, she struggled to manage all three children during visitation and to respond appropriately to them. The children were doing well in a foster home where they had been placed together. Although the children were too young to express their own wishes, their guardian ad litem favored a grant of permanent custody. The children were in need of a legally secure permanent placement, and because no relative or family friend was available to care for them, that placement could only be achieved with a grant of permanent custody.

Following our review of the record, we find that the juvenile court's decision granting permanent custody of S.M.1, K.M., and S.M.2 to HCJFS was supported by sufficient evidence and was not against the manifest weight of the evidence. Mother's assignment of error is overruled, and the judgment of the trial court is 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.

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

To the clerk:

Enter upon the journal of the court on June 6, 2018
per order of the court _____.

Presiding Judge