

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

IN RE: B.I. and B.I.	:	APPEAL NO. C-180403
	:	TRIAL NO. Foo-2204Z
	:	
	:	<i>JUDGMENT ENTRY.</i>

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 appeals the decision of the Hamilton County Juvenile Court granting permanent custody of her two minor children, ages six and four, to the Hamilton County Department of Job and Family Services (“HCJFS”). We affirm.

In her first assignment of error, mother contends the trial court erred by “allowing the *In Re: Williams* attorney to continue on the case.” We overrule this assignment of error under the invited-error doctrine. Under that doctrine, “a party is not entitled to take advantage of an error that he himself invited or induced the court to make.” *Matter of A.S.*, 4th Dist. Pike No. 16CA878 and 16CA79, 2017-Ohio-1166, ¶ 41, citing *State v. Jackson*, 149 Ohio St.3d 55, 2016-Ohio-5488, 73 N.E.3d 414, ¶ 108, quoting *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 404, 2002-Ohio-4849, 775 N.E.2d 517, ¶ 27.

At the permanent-custody hearing, mother requested that an attorney be appointed to represent the children’s interests because mother was reporting that the children had been telling her during visitation they wanted to return home to her.

Because the guardian ad litem had indicated the children had not expressed any desire to return home, the court appointed an attorney for the children.

Half-way through the custody hearing, the father moved for the children's attorney to be removed. Mother opposed father's motion, specifically asking the court to allow the attorney to continue to represent the children's interests.

Because mother had requested and supported the court's appointment of the children's attorney, she has invited any error that she now complains of.

In her second assignment of error, mother argues the trial court erred in granting permanent custody to HCJFS. She contends the juvenile court's award of permanent custody was not supported by sufficient evidence and was against the manifest weight of the evidence.

The termination of parental rights is governed by R.C. 2151.414. Before a juvenile court may terminate parental rights, it must first find that it is in the child's best interests to be placed in the permanent custody of the moving agency. R.C. 2151.414(B)(1) and (D). It must then find one of the four conditions listed in R.C. 2151.414(B)(1). The court must find both prongs by clear and convincing evidence. We will not substitute our judgment for that of the trial court where some competent and credible evidence supports the essential elements of the case. *See, e.g., In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46.

The juvenile court found, under R.C. 2151.414(B)(1), that the children could not and should not be placed with mother because of mother's severe chemical dependency, which made her unable to provide an adequate permanent home for the children, *see* R.C. 2151.414(E)(2), and that a grant of permanent custody was in the best interest of the children. We are unpersuaded by mother's arguments that the evidence does not support the juvenile court's determinations and that the court lost

its way in giving weight to the evidence. *See In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 14-16.

The children were removed from mother's home in August 2015 due to mother's drug use, specifically heroin and Xanax. The incident leading to the minor children's removal involved mother's older, now adult, daughter stealing and using mother's drugs. This adult daughter is now living with mother.

The record demonstrates that mother has been abusing drugs for almost 20 years. In April 2016, mother was diagnosed with opioid dependence, anxiety disorder and mood disorder, and it was recommended that she engage in substance-abuse treatment and mental-health treatment. After mother admitted to using drugs in May 2016, she entered a treatment facility in July 2016, but was discharged in August 2016, after relapsing. She entered another treatment program in November 2016, but relapsed in December 2016 and January 2017. After the last relapse, she began receiving monthly Vivitrol injections, which blocked her drug cravings, and she began to see a counselor. Although mother's counselor testified that he had no concerns about her sobriety and that mother had a solid relapse prevention plan in place, the juvenile court did not find his testimony credible considering that he did not know whether mother was attending NA/AA meetings, and that mother admitted that she was rarely attending as many meetings as she should and had still not found a sponsor.

Further, mother's counselor indicated that for her to be successful, she must stay away from people and places that had triggered her drug use in the past. But mother is surrounded by "triggers." Mother originally indicated that father was a trigger because they had often used drugs together in the past, yet she lives with father. Mother maintains that father is no longer a trigger because he is now sober,

after 17 years of drug abuse. Her other trigger was the neighborhood in which she used to live, yet she chooses to attend NA meetings, when she goes, in her old neighborhood.

Although Vivitrol is helping mother control her cravings, at the end of the permanent-custody hearing she had only been sober for several months, after 20 years of drug use, and there was no credible evidence that she would remain sober in the future. If she chooses to stop taking the Vivitrol, she is left surrounded by people and places that triggered her drug use in the past, and with no sober supports in place.

In addition to the R.C. 2151.414(E)(2) finding, the juvenile court determined that a grant of permanent custody was in the best interest of the children. The evidence supports this finding. Mother loves the children and visited with them regularly, but visitation has remained at the highest level of supervision, and the visits were often chaotic. The oldest child, who suffers from significant anxiety, has indicated that things were “not good” when he lived with his mother and father. He is currently engaged in intensive psychotherapy in effort to overcome trauma he has suffered. His therapist testified that in order for his therapy to be successful, the older child needed to be in a physically and emotionally safe home, and she could not say, with her limited contact with mother, if mother’s home would provide that safety. The therapist, who had been working with the foster parents for some time, testified they provided a safe emotional environment for the children, especially the older child.

The guardian ad litem and the children’s attorney supported a grant of permanent custody and indicated the children had not expressed a desire to return to

their mother's home. The children have been in the care of HCJFS for over two years and need a legally secure placement to move forward.

After reviewing the record, we hold the juvenile court did not err by granting permanent custody to HCJFS and terminating mother's parental rights. Thus, we overrule the second assignment of error.

The juvenile court's judgment 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., CUNNINGHAM and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on October 17, 2018
per order of the court _____.
Presiding Judge