

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

IN RE: D.W.1, D.W.2, D.W.3 and D.D. : APPEAL NO. C-180557
: TRIAL NO. F14-1095Z
:
: *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.

In three assignments of error, mother appeals the decision of the trial court terminating her parental rights to D.W.1, D.W.2, and D.W.3, and awarding custody of D.D to his father. We affirm.

In her first assignment of error, mother argues that the trial court erred when the magistrate failed to appoint counsel for D.W.3, because that child's wishes were not properly represented by the guardian ad litem. The Ohio Supreme Court has held that a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and is entitled to independent counsel in certain circumstances. *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, syllabus. The trial court should investigate the need for such counsel "when a child has 'repeatedly expressed a desire' to remain or be reunited with a parent but the child's guardian ad litem believes it is in the child's best interest that permanent custody of the child be granted to the state." *In re Qu.W.*, 11th Dist. Ashtabula No. 2015-A-0016, 2015-Ohio-2202, ¶ 61, quoting *In re Hilyard*, 4th Dist. Vinton No. 05CA600, 2006-Ohio-1965, ¶ 36. This investigation should take the form of an in camera, recorded interview with the child to determine whether independent counsel is needed. *In re Walling*, 1st Dist. Hamilton No. C-050646, 2006-Ohio-810, ¶ 24.

In this case, the guardian ad litem reported that D.W.3 had not expressed a desire to be reunited with mother, though D.W.3 had repeatedly requested to visit her mother and see her siblings. D.W.3's foster mother only testified that she had told her that she wanted to "go home." This lone statement was not expanded upon, and what D.W.3 meant by the word "home" is unclear. During the in-camera interview, D.W.3 expressed an off-hand wish to live with her mother in a house with her siblings, but also said she would like to live with her grandmother. This record does not reflect that D.W.3 expressed a repeated, consistent desire to return to mother. *See In re Graham*, 167 Ohio App.3d 284, 2006-Ohio-3170, 854 N.E.2d 1126 (1st Dist.) (when the child does not express a repeated, consistent desire to return home, and an in-camera hearing reveals conflicted desires regarding placement, the trial court does not err in failing to appoint independent counsel). We overrule mother's first assignment of error.

In her second assignment of error, mother claims that the trial court erred when it terminated her parental rights to D.W.1, D.W.2, and D.W.3. Before a juvenile court may terminate parental rights and place children in the permanent custody of a children-services agency, it must determine by clear and convincing evidence (1) that one or more of the conditions listed in R.C. 2151.414(B)(1) apply, and (2) that it is in the best interest of the children to grant permanent custody to the agency by considering the factors in R.C. 2151.414(D) and (E) with respect to each child. *See* R.C. 2151.414; *see also In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 13; *In re C.L.*, 1st Dist. Hamilton No. C-170169, 2017-Ohio-7184, ¶ 18.

Here, we cannot say that the juvenile court clearly lost its way and created a manifest miscarriage of justice when evaluating the evidence. *See In re A.B.* at ¶ 16. The trial court found that the children could not be placed with either of the children's parents in a reasonable time or should not be placed with the children's parents. *See* R.C. 2151.101(B)(1)(a). The trial court also properly considered the

appropriate statutory factors to determine the best interest of the children. After doing so, the trial court concluded that mother had “failed continuously and repeatedly to remedy the conditions causing the children to be placed outside the home. Mother [had] failed to engage in services or did not engage enough to produce identifiable behavioral changes.” She had “not taken responsibility for her actions which have negatively impacted her children and caused them distress. She has not been involved in parenting them for the majority of the last four years.” The trial court also noted that the children had thrived in their foster placements. The record supports these conclusions. We overrule mother’s second assignment of error.

In her third assignment of error, mother claims that the trial court erred when it granted custody of D.D. to his father. When determining to whom legal custody should be awarded, the juvenile court should base its determination on the best interest of the child. *See In re Allah*, 1st Dist. Hamilton No. C-040239, 2005-Ohio-1182, ¶ 10. We will not reverse the trial court's award of custody absent an abuse of discretion. *See In re Needom*, 1st Dist. Hamilton Nos. C-080107 and C-080121, 2008-Ohio-2196, ¶ 14. An abuse of discretion “connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude on the part of the court.” *State v. Dotson*, 1st Dist. Hamilton No. C-160324, 2017-Ohio-918, ¶ 7, quoting *Pembaur v. Leis*, 1 Ohio St.3d 89, 91, 437 N.E.2d 1199 (1982).

The trial court did not abuse its discretion when it awarded custody of D.D. to his father. In addition to the problems that the trial court had noted with placing D.D. with mother, the trial court also considered that father had completed a mental-health assessment and there were no recommendations. Father had completed parenting classes, and D.D. had been in father’s custody since July 2017. While father and D.D. have a contentious relationship, and D.D. has tested positive for cocaine, the record indicates that the tension between father and D.D. had arisen from D.D.’s refusal to adjust to the structure in father’s home. The decision to grant

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custody to father was not an abuse of discretion. We overrule mother's third assignment of error, and affirm the judgment of the trial court.

A certified copy of this judgment entry is 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., MYERS and HENDON, JJ.

SYLVIA SIEVE HENDON, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court February 1, 2019

per order of the court _____.

Presiding Judge

