

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

IN RE: K. CHILDREN : APPEAL NO. C-190207
 : TRIAL NO. F10-000022Z
 :
 : *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.

Appellant maternal great aunt (“aunt”) received legal custody of D.D.K., T.D.K. and their older sibling D.K.K. (not involved in this appeal) on February 12, 2012. Appellee the Hamilton County Department of Job and Family Services (“HCJFS”) originally sought permanent custody, and the parents’ rights were terminated. The mother of the children supported the subsequent effort of HCJFS to obtain custody, and father did not participate in the proceedings.

D.K.K. had significant special needs, and as a result was the focus of the majority of the testimony. According to the social worker, aunt only participated in four of D.K.K.’s 52 therapy sessions; though aunt said that she went monthly. D.D.K. and T.D.K. were also delayed and had special needs, but not to the same degree as D.K.K. Though aunt was not seeking custody of D.K.K., the trial court considered the testimony about that child relevant because, since the other two children had similar issues, “[aunt’s] treatment of [D.K.K.] is very telling about her capability as a caregiver for [D.D.K.] and [T.D.K.] as well.”

The trial court also found that the home environment that the children lived in was inappropriate. D.K.K. was kept locked in a basement where there was no area set up for a bedroom. The room where the child slept had only a bed frame and was stained with urine. Aunt sometimes made the child sleep in the bathroom, where the bathtub contained children’s clothing stained with urine.

The trial court noted that there were additional questions regarding aunt's ability to provide stable housing. Aunt suffers from significant health issues, has blacked out on a few occasions, and suffers from gout, high blood pressure, and asthma, for which she had to be hospitalized. Her home is "very cluttered" and covered in dust. Aunt was having difficulty meeting her personal financial needs because she had been making ends meet using the assistance she had received when she had custody of the children. Her home was in foreclosure at the time of trial. In summarizing his conclusions, the magistrate wrote:

[Aunt] has suffered a series of health problems which have caused her to either leave her residence to be assisted by relatives or to be hospitalized. [Aunt] has suffered financial reversals that make it uncertain if she will be maintaining her home. Finally, when three special-needs children were in her home, [Aunt] was overwhelmed by the needs of [D.K.K.] and was unable to participate in the special services for that child to receive adequate parental care. Conversely, the two youngest children are residing in a home that is currently providing for their care and willing to act as an adoptive home. The court finds the latter plan to be in the children's best interest.

In one assignment of error, aunt claims that the trial court abused its discretion when it awarded custody of D.D.K. and T.D.K. to HCJFS and denied her petition for custody. As this court has stated:

Under R.C. 2151.353(A)(3), if a juvenile court finds a child to be an abused, dependent, or neglected child, it may award legal custody to any person who has filed a petition for legal custody. The court has discretion to determine what placement option is in the child's best interest. In determining the child's best interest, the court must consider the factors set out in R.C. 2151.414(D). An appellate court will not reverse the juvenile court's award of custody absent an abuse

of discretion. If the juvenile court's decision regarding a child's best interest is not supported by competent, credible evidence, then it is unreasonable and may be reversed.

Relatives seeking custody of a child do not have the same rights as a natural parent. No preference exists for family members, other than parents, in custody awards.

(Citations omitted.) *In re Patterson*, 1st Dist. Hamilton No. C-090311, 2010-Ohio-766, ¶ 15-16.

The best interest of the children is determined by examining the R.C. 2151.414(D)(1) factors:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

Aunt argues that the trial court gave undue weight to the facts that (1) the children were more successful in the care of the foster parents who were willing to adopt, and (2) she had health issues, but claimed they would not interfere with her ability to care for the children. She also argued that the trial court failed to give sufficient weight to the fact that the children were bonded to her and that they had lived with her for their entire lives. But her argument seems to lean, implicitly, on the notion that she had a greater claim to the children than another person. Under the law, she does not.

The juvenile court has discretion to determine what placement option is in the child's best interest, and an appellate court will not reverse its decision absent an abuse of discretion. *In re M.*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, ¶ 30, citing *In re Patterson*, 1st Dist. Hamilton No. C-090311, 2010-Ohio-766, at ¶ 15. An abuse of discretion exists if the court's decision regarding the child's best interest is not supported by competent, credible evidence. *Id.*, citing *In re D.M.*, 1st Dist. Hamilton No. C-140648, 2015-Ohio-3853, ¶ 11.

Here, the decision was supported by competent, credible evidence. The trial court set out the appropriate statutory factors and set forth the evidence presented to that related to those factors. In addition to the evidence set forth above, the trial court also noted that mother and the guardian ad litem for the children supported granting permanent custody to HCJFS. The trial court concluded by stating:

These children have already been removed from the home of their parents and have significant special needs. They are in need of a legally secure placement. [Aunt] has shown through her treatment of [D.K.K.] that she is incapable of adequately providing for a child with special needs, and while this matter has been pending, [aunt] has

OHIO FIRST DISTRICT COURT OF APPEALS

shown she is not presently capable of providing a permanent home for the children.

This decision is supported by competent, credible evidence. We overrule aunt's sole 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 CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on September 11, 2019

per order of the court _____.

Presiding Judge

