

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

IN RE: D.K.H., L.Z.H., K.L.H., and : APPEAL NO. C-190223
Z.A.H. : TRIAL NO. F-05-2291 X

: *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 appeals the Hamilton County Juvenile Court's judgment adopting the magistrate's decision to grant permanent custody of her four children to the Hamilton County Department of Job and Family Services ("HCJFS"). In her sole assignment of error, mother argues that the juvenile court's decision was against the manifest weight of the evidence. We disagree.

Mother is the natural parent of Z.A.H., K.L.H., L.Z.H., and D.K.H. Mother has a long, involved history with HCJFS. HCJFS originally opened a case against mother in 2005 due to a lack of adequate supervision. The circumstances that caused the children to be placed outside the home in this instance also pertain to a lack of adequate supervision. On June 25, 2016, mother left the children home alone, with the two oldest children, ages 14 and 12, supervising the two youngest children, ages 8 and 4. At approximately 11:30p.m., D.K.H., the four-year-old, went to a neighbor's residence and told the neighbor that someone was in mother's house trying to hurt L.Z.H., the eight-year-old. The neighbor went to mother's residence

and observed a male friend of Z.A.H. running from the home. Officers from the Cincinnati Police Department arrived on the scene and attempted to contact mother. However, all attempts at contact were unsuccessful.

HCJFS obtained a telephone emergency order on June 26, 2016. On June 27, 2016, HCJFS filed for and received interim custody of the children. The juvenile court adjudicated the children abused, neglected, and dependent on February 27, 2017, and on July 19, 2017, the children were committed to the temporary custody of HCJFS. HCJFS filed a motion to modify temporary custody to permanent custody on December 13, 2017. On October 23, 2018, the magistrate issued a decision granting permanent custody to HCJFS. The juvenile court adopted the magistrate's decision over objection and entered judgment for HCJFS.

A juvenile court's determination to award permanent custody must be supported by clear and convincing evidence. *In re W.W.*, 1st Dist. Hamilton No. C-110363, 2011-Ohio-4912, ¶ 46. "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Id.* at 477.

Under R.C. 2151.414(B), the juvenile court may grant a motion for permanent custody if the court determines, by clear and convincing evidence, that permanent custody is in the best interest of the child and that one of the five conditions set forth in R.C. 2151.414(B)(1) applies.

Here, the magistrate found that the children's custodial history satisfied the condition set forth in R.C. 2151.414(B)(1)(d). The children entered foster care on June 26, 2016. Pursuant to R.C. 2151.414(B)(1), the children are considered to have entered temporary custody on August 25, 2016,—60 days after removal. HCJFS

moved for permanent custody on December 13, 2017, approximately 16 months after the children entered temporary custody. This finding is undisputed. Therefore, the record clearly and convincingly supports a finding under R.C. 2151.414(B)(1)(d).

The record also supports the juvenile court's finding that it is in the children's best interest to be placed in the permanent custody of HCJFS. In determining the best interest of the children, the juvenile court must consider all relevant factors, including, but not limited to, (a) "[t]he interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers"; (b) "[t]he wishes of the child"; (c) "[t]he custodial history of the child"; (d) "[t]he 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"; and (e) "[w]hether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child." R.C. 2151.414(D)(1).

With regard to the first two factors, the record indicates that at least three of the children are bonded to mother and that two of the children wished to return to mother. However, the guardian ad litem advocated that permanent custody was in the best interest of the children. The guardian ad litem articulated that Z.A.H. desired to remain with a relative or his foster mother and that D.K.H. was too young to state with whom he wished to live.

The custodial history of the children also weighs heavily against mother. At the time of the permanent-custody hearing, the children had been out of mother's care for approximately 30 months. The record does not indicate a negative interrelationship between the children and their out-of-home providers.

The children are need in of a legally secure placement which cannot be achieved without a grant of permanent custody to HCJFS. No relatives or paternal

figures engaged with HCJFS as a permanent placement for the children and the children cannot be returned to their mother. Mother's neglect and lack of commitment permeate the record. HCJFS requested that mother complete a diagnostic assessment of functioning. The assessment recommended that mother engage in med-somatics and individual therapy. HCJFS further requested that mother complete parenting classes, comply with probation, and consistently attend visitation. Mother did not substantially comply with the case plan.

Mother inconsistently engaged in both med-somatics and individual therapy. As of the date of the hearing, mother had not completed med-somatics or individual therapy. Mother also inconsistently engaged in parenting classes. Mother was twice referred to Beech Acres Parenting Center. The first referral was closed because mother did not engage with the center. Mother engaged upon the second referral and successfully completed a four-week parenting class program. However, mother did not do very well during the one-on-one parenting coaching sessions. Mother missed several appointments, often forgetting about the sessions and failing to make contact. Mother was eventually discharged from the program due to poor attendance.

The record demonstrates a similar pattern regarding mother's commitment to visitations. Evidence as to mother's demeanor and engagement with the children during visitation is inconsistent. However, the evidence is clear that mother was frequently late to the visits and that Z.A.H. refused to participate in visitation. Mother never progressed beyond one-to-one facilitated visits—the most restrictive level of supervision.

As of the date of the hearing, HCJFS still had concerns with mother's lack of insight into why the case with HCJFS was opened, mother's inconsistent attendance

in mental-health services, mother's tardiness to visitation, and mother not making the children a top priority. Based on the foregoing, the record contains ample competent and credible evidence to support the juvenile court's grant of permanent custody to HCJFS. Therefore, we overrule mother's sole assignment of error and affirm the juvenile court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on June 28, 2019

per order of the court _____.

Presiding Judge