

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

IN RE: K.J.M. : APPEAL NO. C-230163
: TRIAL NO. F-17-1250Z
:
: *OPINION.*

Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 19, 2023

Roger W. Kirk, for Appellant Mother,

Pro Kids and *Jeffrey A. McCormick*, for Appellee Guardian ad Litem for K.J.M.,

Melissa A. Powers, Hamilton County Prosecuting Attorney, and *Taryn J. Brown*, Assistant Prosecuting Attorney, for Appellee Hamilton County Department of Job and Family Services.

WINKLER, Judge.

{¶1} Appellant mother appeals the judgment of the juvenile court terminating her parental rights and awarding permanent custody of her child K.J.M. to the Hamilton County Department of Job and Family Services (“HCJFS”). For the reasons that follow, we affirm.

Background

{¶2} HCJFS’s involvement with K.J.M. began shortly after his birth on March 22, 2022, because K.J.M. was born with cocaine and marijuana in his system. HCJFS filed a motion for temporary interim custody of K.J.M., and a motion with the court under R.C. 2151.419(A)(2) requesting a determination from the court that HCJFS is not required to make reasonable efforts to eliminate the continued removal of K.J.M. from the home, because mother had five other children previously involuntarily committed to the custody of HCJFS. The juvenile court granted both of HCJFS’s motions. Shortly thereafter, K.J.M. was adjudicated dependent and abused. HCJFS then moved for permanent custody of K.J.M.

{¶3} At the permanent-custody hearing, the HCJFS caseworker testified that mother had tested positive for drugs during prenatal screenings, that K.J.M. had tested positive for drugs upon birth, and that mother previously lost custody of five children. The record indicates that mother has a history of mental-health issues and substance-abuse problems, as well as homelessness. The caseworker scheduled several supervised visits between mother and K.J.M., which mother did not attend. HCJFS had attempted to contact father without success and father had never attempted to contact HCJFS. Mother attended part of the permanent-custody

hearing, but she chose not to testify. The HCJFS caseworker also testified that K.J.M. and his foster family were bonded.

{¶4} The magistrate granted HCJFS's motion for permanent custody. Mother filed objections out of time, which the juvenile court permitted. The juvenile court entered an order finding that K.J.M. could not be placed with either parent within a reasonable time, or should not be placed with either parent. The juvenile court also determined that granting permanent custody of K.J.M. to HCJFS was in K.J.M.'s best interest.

{¶5} Mother appeals.

Permanent Custody

{¶6} In her sole assignment of error, mother argues that the trial court erred in granting permanent custody of K.J.M. to HCJFS.

{¶7} Under R.C. 2151.414(B), a juvenile court may grant permanent custody if it finds, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency, and one of the five conditions set forth in R.C. 2151.414(B) applies.

{¶8} R.C. 2151.414(B)(1) provides in pertinent part that:

[T]he court may grant permanent custody of a child to a movant if the court determines at the hearing * * * by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, has not 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 the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶9} To determine whether a child cannot or should not be placed with either parent under R.C. 2151.414(B)(1)(a), a juvenile court considers the 16 factors set forth in R.C. 2151.414(E). *In re K.S.*, 1st Dist. Hamilton Nos. C-230033, C-230043 and C-230044, 2023-Ohio-1827, ¶ 34, citing *In re W/H*, 1st Dist. Hamilton No. C-220113, 2022-Ohio-1778, ¶ 13. In this case with respect to mother, the juvenile court relied on R.C. 2151.414(E)(1), (2), and (4), which provide:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that

is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child[.]

{¶10} In this case, the juvenile court found that mother had failed to remedy the conditions that caused K.J.M.'s removal because mother had untreated substance-abuse and mental-health issues, which led to the involuntary termination of her parental rights with respect to five older children and led to positive drug screens while pregnant with K.J.M. Mother also failed to participate in substance-abuse services offered as part of her prenatal care. Both mother and K.J.M. had illicit substances in their systems at K.J.M.'s birth. Mother also had not engaged in mental-health services. Finally, mother failed to attend scheduled visits with K.J.M. at the Family Nurturing Center.

{¶11} R.C. 2151.414(D)(1) provides that the court must consider the following in determining the best interest of the child:

(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 * * *;

(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.

{¶12} The juvenile court found that K.J.M. had been in the same foster family since two days after birth, that mother had not engaged in visitation with K.J.M., and that K.J.M. was bonded to the foster family and also had the ability to see his siblings in the foster placement. *See* R.C. 2151.414(D)(1)(a), (c). The juvenile court found that K.J.M. is too young to express an opinion regarding placement, but that the guardian ad litem believed that K.J.M.'s best interest would be served by awarding permanent custody to HCJFS. *See* R.C. 2151.414(D)(1)(b). The juvenile court also found mother has not shown that she can provide a safe and permanent home for K.J.M. because of her untreated substance-abuse and mental-health issues, father had not made any attempt to contact HCJFS, and no other relative expressed a willingness to care for K.J.M. *See* R.C. 2151.414(D)(1)(d). The juvenile court found that mother had her

parental rights terminated involuntarily with respect to five of her children. *See* R.C. 2151.414(D)(1)(e) and 2151.414(E)(11).

{¶13} Mother argues that she never had a chance to parent K.J.M., and that HCJFS never assisted mother in accomplishing reunification. Mother argues that HCJFS failed to present new evidence regarding her mental health or drug abuse, and that the state presented only sparse evidence regarding mother's housing, income, and visitation. Because mother had five other children that had been involuntarily removed from her custody, HCJFS was not required to use reasonable efforts to reunify mother and K.J.M. under R.C. 2151.419(A)(2).

{¶14} The record supports the juvenile court's findings regarding the best-interest factors, and the juvenile court's decision to award permanent custody is supported by clear and convincing evidence. *See In re W.W.*, 1st Dist. Hamilton No. C-110363, 2011-Ohio-4912, ¶ 46. Mother's mental-health needs and substance-abuse issues remain a barrier to providing a safe and secure placement for K.J.M.

{¶15} We overrule mother's assignment of error.

Conclusion

{¶16} Having overruled mother's assignment of error, we affirm the judgment of the juvenile court.

Judgment affirmed.

BERGERON, P.J., concurs.
KINSLEY, J., concurs separately.

KINSLEY, J., concurring separately.

{¶17} I write this separate concurrence specifically for parents like A.M. who face losing their children because of addiction.

{¶18} The law in this area is filled with language about the parents' failures. *See, e.g.*, R.C. 2151.414(E)(1) (permitting termination of parental rights where parents fail to remedy the conditions that led to a child's removal from the home). But the law, with its narrow focus, overlooks the good things these parents did, or tried to do, given their given circumstances. Their light, spirit, and strength will no doubt persist in the children they bravely created.

{¶19} Second, I acknowledge the additional suffering our decisions create for parents who are already in tremendous physical and emotional pain. Addiction is an unforgiving disease. *See* Dawinder S. Sidhu, *Criminal Law x Addiction*, 99 N.C.L. Rev. 1083, 1094-1096 (2021) (describing impacts of addiction on the brain and the body).¹ It can cause parents to take actions that we regard as uncaring, neglectful, or undesirable. Often parents like A.M. who struggle with drug addiction and its physical manifestations are faulted for not visiting a child or for missing a court appearance. But these behaviors may come from avoidance of pain and self-preservation, rather than lack of care for a child. *See* Richard C. Boldt, *Evaluating Histories of Substance Abuse in Cases Involving the Termination of Parental Rights*, 3 J. Health Care L. & Pol'y 135, 137 (1999).

{¶20} Some might say that A.M. has not been the most physically present mother, either in the first few months of K.J.M.'s life or in court. But, on this record,

¹ The author of this article is a recovering addict who has gone on to open a recovery center and to publish this impactful paper on the role that addiction can and should play in the criminal legal system. Sidhu, 99 N.C.L. Rev. at 1083 (note). I found his voice very helpful in my own research about addiction and cite him as an example of what is possible in the recovery process.

I do not doubt that A.M. very much loves and cares for all of her children and that she has acted out of love as she is able.² Given the difficult life circumstances she has faced, which include not only a chemical dependency, but a debilitating health condition, the incarceration of a parent at a young age, sexual victimization, chronic unemployment, and severe mental health diagnoses, A.M.'s ongoing survival is itself an act of love.

{¶21} Third, I want to convey a message of hope that sobriety is possible. The disease of addiction can be overcome with sustained support and an understanding community. Sadly, the resources necessary to attain lasting sobriety are far too lacking for many people, as appears to be the case for A.M. here.

{¶22} The law is structured to require very specific outcomes for children who are born to parents suffering from addiction, particularly where those parents have already lost custody of older children or have not seen improvement through earlier case planning. *See* R.C. 2151.419(A)(2), 2151.414(D)(1)(e) and 2151.414(E)(11). But the law offers very little support for parents in these situations who have yet to achieve sobriety. The children will often go on to be adopted by stable foster parents, as is likely the case for K.J.M. The parents, on the other hand, are typically left to suffer in the shadows and denied the external supports needed to heal their brains from the devastating impacts of substance abuse.

{¶23} A 1999 report to Congress by the Department of Health and Human Services called attention to this pattern, in which children are taken from their parents one by one on the basis of addiction alone without any support for the parents. *See* Department of Health and Human Services, *Blending Perspectives and Building*

² A.M. has lovingly selected names for all six of her children that begin with K.J., and they all have the initials K.J.M. This is a lovely tribute to their shared familial bond.

Common Ground: A Report to Congress on Substance Abuse and Child Protection, 7 (1999). Nearly a quarter century later, A.M.'s case highlights that our systems still follow this same pattern, contain the same gaps, and embody the same flawed assumptions about parents who suffer from chemical dependency. What a shame.

{¶24} Contrary to the conclusions our laws require, research shows that, with support, parents suffering from addiction can effectively parent their children. *See, e.g.,* Susan C. Boyd, *Mothers and Illicit Drugs: Transcending the Myths*, 14-16 (1999) (reviewing 14 studies demonstrating that women who use illegal drugs can be fit parents); Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act*, 1 Nw. J.L. & Soc. Pol'y 303, 321 (2006). Research also shows that children born to drug-addicted mothers can actually fare better when placed with their biological parents rather than in foster care, in large part due to the damaging impacts of forced separation on an infant. *See* Melanie Fridl Ross, *To Have and to Hold: University of Florida Shows Cocaine-Exposed Infants Fare Better with Their Biological Mothers*, Science Daily, (May 2, 1998), available at <http://www.sciencedaily.com/releases/1998/05/980505092617.htm> (accessed July 11, 2023). Nevertheless, drug-dependent mothers often avoid seeking help for their addictions out of fear that doing so will cause them to lose their children. *See* Emily N. Neger & Ronald J. Printz, *Interventions to Address Parenting and Parental Substance Abuse: Conceptual and Methodological Considerations*, 39 *Clinical Psych. Rev.* 71-82 (July 2015).

{¶25} And so they continue to suffer in silence, and we continue to remove their children. This need not be the case. Our policy-makers can, and should, do better.

{¶26} Until the law catches up to science, I call attention to the need for supportive services for the disease of addiction, particularly when negative outcomes in the legal system increase the desire to self-medicate. Parents who lose their children may understandably turn to substances to dampen the unspeakable sorrow they must feel. They should be helped, not judged, in their journey.

{¶27} To A.M., and parents like A.M. who are struggling with addictive disorders, I want you to know that you matter. To the amazing children who will carry your spark into the world. To your friends and family. And to me. Please don't give up.

Please note:

The court has recorded its own entry on the date of the release of this opinion.