

OHIO FIRST DISTRICT COURT OF APPEALS

the children’s best interest under R.C. 2151.414(D)(1). *See* R.C. 2151.414(B)(1)(a), (D)(1), and (E); *In re K.S.*, 2023-Ohio-1827, ¶ 33-34, 39 (1st Dist.).

The agency sought permanent custody of D.H.2 as an initial disposition under R.C. 2151.353(A)(4). Consequently, to grant permanent custody of D.H.2 to the agency, the juvenile court was required to find that (1) D.H.2 “could not be placed with either parent within a reasonable time or should not be placed with either parents, using the factors set forth in R.C. 2151.414(E),” and (2) permanent custody to the agency was in D.H.2’s best interest under the factors set forth in R.C. 2151.414(D)(1). *In re L.S.H.*, 2024-Ohio-4553, ¶ 21 (1st Dist.), quoting *In re L Children*, 2023-Ohio-1346, ¶ 12 (1st Dist.); R.C. 2151.353(A)(4).

Thus, despite the issue being an initial disposition for D.H.2, the required findings were the same for all the children. Thus, to grant permanent custody of the children to the agency, the juvenile court was required to find that the children could not be placed with either parent within a reasonable time or should not be placed with either parent under R.C. 2151.414(E) and that permanent custody to the agency was in the children’s best interest under R.C. 2151.414(D)(1).

I. R.C. 2151.414(E)

The juvenile court, through adoption of the magistrate’s decision, found that the children could not be placed with mother within a reasonable time or should not be placed with mother based on its findings under R.C. 2151.414(E)(1), (E)(4), and (E)(16). Notably, “[w]here the court finds that even one of the R.C. 2151.414(E) factors exists by clear and convincing evidence, that prong is satisfied.” *In re L.S.H.* at ¶ 22, citing *In re A.H.*, 2020-Ohio-3102, ¶ 23 (1st Dist.).

Mother in essence, asserts that the trial court erred in finding that the children could not be placed with her within a reasonable time where the record shows that she

OHIO FIRST DISTRICT COURT OF APPEALS

engaged in case-plan services and remedied all the initial concerns that caused the children's removal, except for housing, which is a concern that can be remedied within a reasonable time.

The juvenile court, through adoption of the magistrate's decision, found that mother failed to engage in any substance-use treatment, never consistently attended the scheduled toxicology screens over the course of the case, tested positive for cocaine on the toxicology screens that were submitted, failed to consistently engage in individual counseling, was discharged from the domestic-violence services for lack of engagement, lacked stable housing since September 2023, lacked stable employment since the start of the year, failed to maintain consistent contact with the agency, failed to consistently visit with the children since the spring of 2023, and failed to demonstrate any necessary behavioral change.

A thorough review of the record reveals that these findings were supported by the evidence. Thus, contrary to mother's assertion, the record does not indicate that she complied with the case plan or remedied the initial concerns that caused the children's removal. Further, the record does not contain any indication that mother had a plan in place to obtain housing within a reasonable time. Rather, she indicated that she was waiting to be placed into a shelter so that she could get a caseworker and start the process of obtaining housing assistance. Therefore, mother's argument that the record shows that the children could be placed with her within a reasonable time is without merit. Consequently, we overrule the assigned error as to the juvenile court's determinations under R.C. 2151.414(E).

II. R.C. 2151.414(D)(1)

In determining the best interest of the children, the court must consider all relevant factors, including, but not limited to, the factors expressly set forth in R.C.

OHIO FIRST DISTRICT COURT OF APPEALS

2151.414(D)(1)(a)-(e). “No single factor is given greater weight or heightened significance.” *In re K.S.*, 2023-Ohio-1827, at ¶ 39 (1st Dist.), quoting *In re A.D.*, 2022-Ohio-2346, ¶ 17 (1st Dist.).

Under R.C. 2151.414(D)(1)(a), the juvenile court, through adoption of the magistrate’s decision, found that D.H.1, P.H.2, and D.H.2 were bonded with mother, but found that P.H.1’s bond to mother was “significantly damaged” and P.H.1 no longer wished to remain in contact with mother. On the other hand, D.H.1, P.H.1, and P.H.2 are all placed in the same foster home and had been for a substantial amount of time, and were well bonded to each other and to the foster family, who have expressed a desire to provide a permanent home for the children. Further, D.H.2 is well-bonded to his foster family, who are the only caretakers he has ever known and who have expressed a desire to provide him with a permanent home. Even further, all the children were able to establish and maintain a bond, despite being in two separate homes, as they all engage in regular visitation and phone contact, as arranged by the foster families.

Mother appears to argue that the juvenile court erred in finding that her relationship with P.H.1 was “significantly damaged.” She asserts, “What was left off that analysis, is the child’s disappointment in mother’s relationship with [father 2], who is not her father.” She does not expand upon this argument in any way or cite to the record at all in support of this argument. A thorough review of the record also does not reveal any support for this argument. Therefore, mother’s argument is without merit.

Under R.C. 2151.414(D)(1)(b), the juvenile court, through adoption of the magistrate’s decision, found that D.H.1, P.H.2, and D.H.2 were too young to express their wishes in any meaningful way, but P.H.1 expressed that she does not wish to have

OHIO FIRST DISTRICT COURT OF APPEALS

any contact with mother as she does not feel comfortable with her, especially when mother is using substances. P.H.1 apparently expressed to the magistrate in an in-camera review that she wanted all the children to remain in the foster homes and to remain in the same home together and does not believe it to be in their best interest to be placed in the care of mother or grandmother.

Mother first appears to argue that the juvenile court erred in finding that P.H.1 does not wish to remain in contact with mother, as mother testified that she communicates with her daughter and “simply chooses not to have a long drive to sit in a cubicle at the Family Nurturing Center for visits.” On cross-examination, the guardian ad litem (“GAL”) did agree that she was aware that P.H.1 had been in communication with her mother via text message. However, the GAL also testified that P.H.1 told her that she no longer wished to have contact with mother, and did not even want to visit with her. When asked if she believed P.H.1 was of sufficient maturity to express her wishes, the GAL said, “[Y]es.” This evidence supports the juvenile court’s finding that P.H.1 does not wish to remain in contact with mother. Therefore, mother’s argument is unpersuasive.

Mother further argues that the juvenile court’s decision “accepts the wishes of the 15-year-old child but takes it a step further to incorporate her wishes for her siblings, an analysis not envisioned by the statute.” However, under R.C. 2151.414(D)(1), the trial court is required to consider “all relevant factors,” and mother points to no authority to support the assertion that a juvenile court errs in considering an older child’s wishes regarding her younger siblings when making a best-interest determination. Therefore, this argument is also unpersuasive.

Under R.C. 2151.414(D)(1)(c), the juvenile court, through adoption of the magistrate’s decision, found that, although the 12-of-22 provision was not met, P.H.1

OHIO FIRST DISTRICT COURT OF APPEALS

has been in substitute care for 694 days (12 percent of her life), D.H.1 has been in substitute care for 694 days (53 percent of his life), P.H.2 has been in substitute care for 694 days (77 percent of her life), and D.H.2 has been in substitute care for 272 days (100 percent of his life).

Mother does not appear to challenge these findings, instead asserting that the only time the children have been out of mother's care was "due to this case," and the days calculated were "due largely to scheduling and litigating the matter," as the 12-of-22 provision was not met for the older children. Thus, mother appears to only assert a manifest-weight-of-the-evidence argument, arguing that this factor should not have weighed against her. However, the extended length of time added to the case after the permanent-custody motion was filed regarding the older children was largely due to mother's actions regarding D.H.2 while the case was already pending for her older children. Therefore, to the extent that mother's argument asserts that the juvenile court erred in weighing this factor against her, mother points to no evidence to indicate that such a decision was against the manifest weight of the evidence. Therefore, this argument is without merit.

Under R.C. 2151.414(D)(1)(d), the magistrate found that mother could not provide a legally secure placement for the children as P.H.1 refuses to return to mother's care and mother has not achieved sobriety, failed to consistently engage in mental-health services, had "periods of inconsistency" in visitation and failed to progress to unsupervised or extended visits with the children, remains in a relationship with father 2 despite a significant pattern of domestic violence, does not have stable housing or any means of financial support, and "has not demonstrated any behavioral changes that indicate that she is in a better position to provide a stable home for the children than she was when the children were removed."

OHIO FIRST DISTRICT COURT OF APPEALS

The magistrate further found that grandmother could not provide P.H.2 and D.H.2 with a legally secure placement as both home studies that she engaged in were denied, the agency has concerns that grandmother's mental health is not stable and grandmother did not follow through with engagement in any services, grandmother has a history of "aggressive behavior" and admitted to prior thoughts of stabbing the children and having homicidal ideations regarding her mother, the children's behavioral needs require a significant amount of patience and understanding and grandmother's behavior have not indicated that she can handle this, grandmother has indicated a need for a genetic connection to the children and no genetic testing has been conducted, grandmother has indicated that she wants a "grandparent" role and would let the parents have the children "at times," and grandmother has no relationship or bond with the children. Beyond that, the magistrate found that the children have been in stable placements for a substantial amount of time and have significant bonds with their caregivers, and the removal of P.H.2 to grandmother would take her away from her siblings that she has always lived with and is very close to and the removal of D.H.2 to grandmother would take him away from the only caregiver he has ever known.

The juvenile court approved and adopted the magistrate's decision. Additionally, the juvenile court found that a remand of custody to mother was not in the children's best interest as mother failed to "conclusively" reach sobriety or maintain stable income or housing. Further, the juvenile court found that placing P.H.2 and D.H.2 with grandmother would "perpetuate further trauma" as grandmother failed two home studies, raised concerns regarding the extremity of her emotional responses, and has never met the children and does not have a relationship or bond with them.

In challenging the juvenile court's finding under this factor, mother repeats the same argument addressed above that the children can be placed with her within a reasonable time once she obtains housing. However, for the same reasons already expressed above, this argument is without merit.

Grandmother challenges the juvenile court's finding that she could not provide a legally secure placement for P.H.2 and D.H.2, and, in essence, argues that the record shows that she can provide a legally secure placement for these children where she raised other children to adulthood with no issues, has custody of an 11-year-old great nephew with no issues, and there were no safety concerns with her home.

The record does indicate that grandmother has custody of her 11-year-old great nephew and that there were no safety concerns with her home. However, a review of the record also reveals the juvenile court's findings regarding the concerns about the children being placed in grandmother's care were supported by the evidence. Therefore, we cannot hold that the juvenile court's findings under this factor were not supported by the record.

III. Conclusion

Based on all the foregoing, we hold that the juvenile court's decision granting permanent custody of P.H.1, D.H.1, P.H.2, and D.H.2 to the agency was supported by sufficient evidence and not against the manifest weight of the evidence. Consequently, we overrule the assignments of error and affirm the judgment of the trial court.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and WINKLER, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on 12/18/2024 per order of the court.

By: _____
Administrative Judge