

[Cite as *In re F.C.*, 2010-Ohio-3113.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

IN RE: :  
F.C. : C.A. CASE NO. 23803  
: T.C. CASE NO. JC-07-3146  
: (Civil Appeal from Common  
Pleas Court, Juvenile Div)

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O P I N I O N

Rendered on the 2<sup>nd</sup> day of July, 2010.

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GRADY, J.:

{¶ 1} This appeal is brought by M.C., the father of F.C., from  
a judgment of the juvenile court that granted permanent custody  
of F.C. to Montgomery County Children’s Services (MCCS).

{¶ 2} On March 30, 2007, after MCCS filed a complaint alleging

that F.C. was a dependent child, M CCS was awarded interim temporary custody of F.C. On June 25, 2007, F.C. was adjudicated a dependent child, and, on October 12, 2007, M CCS was awarded temporary custody of F.C. On June 3, 2008, M CCS filed a motion seeking permanent custody of F.C.

{¶ 3} A two-day permanent custody hearing was held before a magistrate on December 4, 2008 and March 25, 2009. The paternal grandparents filed a motion seeking legal custody of F.C. on March 24, 2009. On April 20, 2009, the magistrate filed her decision awarding permanent custody of F.C. to M CCS.

{¶ 4} M.C., the father of F.C., filed timely objections to the magistrate's decision. M CCS filed a response to the objections. M.C. subsequently filed amended objections to the magistrate's decision.

{¶ 5} On November 24, 2009, the trial court filed its decision and judgment entry overruling M.C.'s objections and affirming the magistrate's decision, awarding permanent custody of F.C. to M CCS. M.C. appealed to this court.

#### ASSIGNMENT OF ERROR

{¶ 6} "THE TRIAL COURT ERRED BY GRANTING THE MOTION FOR PERMANENT CUSTODY WHEN MCDJFS FAILED TO SHOW, BY CLEAR AND CONVINCING EVIDENCE, THAT PERMANENT CUSTODY WAS APPROPRIATE."

{¶ 7} "A. MCDJFS FAILED TO PROVIDE CLEAR AND CONVINCING

EVIDENCE THAT F.C. COULD NOT OR SHOULD NOT BE PLACED WITH M.C.”

{¶ 8} M.C. argues that MCCS failed to present clear and convincing evidence that F.C. could not be placed with him within a reasonable time or should not be placed with him. We need not address that issue.

{¶ 9} R.C. 2151.414(B)(1) provides that the court may grant the motion of an agency seeking permanent custody of a child if it finds, by clear and convincing evidence, that it is in the best interest of the child to award permanent custody of the child to the agency, and the court makes one of the four alternative findings set out in R.C. 2151.414(B)(1). One of those alternative findings is that 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.” R.C. 2151.414(B)(1)(a). Another is that the child “has been in the temporary custody of one or more public children’s services agencies for twelve or more months out of a consecutive twenty-two month period.” R.C. 2151.414(B)(1)(d).

{¶ 10} Where, as here, the court finds that an award of permanent custody to the agency is in the child’s best interest and that the child has been in the temporary custody of the agency for twelve or more months out of a consecutive twenty-two month period, the finding is conclusive of the permanent custody issue.

The court need not go on and address, as it did here, whether

the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶ 11} Clear and convincing evidence is the amount of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations to be proved. It is an intermediate standard of proof, being more than a preponderance of the evidence and less than evidence beyond a reasonable doubt.

*State v. Ingram* (1992), 82 Ohio App.3d 341; *Cross v. Ledford* (1954), 161 Ohio St. 469, 477.

{¶ 12} By the time the permanent custody hearing in this case concluded on March 25, 2009, F.C. had been in the temporary custody of MCCS for more than twelve months out of a consecutive twenty-two month period; ever since March 30, 2007. Accordingly, there is clear and convincing evidence to support the trial court's finding that F.C. had been in the temporary custody of MCCS for twelve or more months out of a consecutive twenty-two month period. That finding, when combined with the court's further finding that an award of permanent custody to the agency is in F.C.'s best interest, is legally sufficient under R.C. 2151.414(B)(1)(d) to award permanent custody of F.C. to MCCS. There is no need to address whether F.C. cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶ 13} "B. MCDJFS FAILED TO PROVIDE CLEAR AND CONVINCING

EVIDENCE THAT GRANTING ITS PERMANENT CUSTODY MOTION WAS IN F.C.'S BEST INTEREST."

{¶ 14} M.C. further argues that M CCS failed to present clear and convincing evidence that a grant of permanent custody to the agency was in F.C.'s best interest. We disagree.

{¶ 15} In determining the best interests of the child, R.C. 2151.414 (D) (1) requires the court to consider, among other relevant factors, the following:

{¶ 16} "(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;

{¶ 17} "(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;

{¶ 18} "(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;

{¶ 19} "(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;

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

{¶ 21} In relation to F.C.'s interaction and relationship with her parents, relatives and foster care givers, R.C. 2151.414 (D) (1) (a), the evidence demonstrates that the foster parents have formed a strong bond with F.C., who is the only foster child residing in their home. The foster parents have provided a stable and loving home for F.C. The foster mother "pours time into her." F.C. is calm and relaxed in the foster mother's presence. The foster parents' adult daughter has also bonded with F.C. The foster parents wish to adopt F.C.

{¶ 22} On the other hand, F.C.'s mother voluntarily surrendered her parental rights. F.C.'s father, M.C., has not significantly bonded with F.C., has missed numerous visitation appointments, and repeatedly left the visitation room when present. F.C. is uncomfortable and insecure when she is with either of her natural parents.

{¶ 23} M.C. has a history of drug abuse and probation

violations, is frequently incarcerated, has failed to remedy the conditions that initially caused F.C. to be placed outside the home, and he was incarcerated at the time of the permanent custody hearing. After being released from jail, M.C. lived with F.C.'s paternal grandparents, and stole from them to support his drug habit. Both of F.C.'s parents engaged in drug activity while living at the home of the paternal grandparents. M.C.'s drug problems and illegal behavior is a threat to F.C.'s safety and welfare.

{¶ 24} M.C. argues that the paternal grandparents were ready and able to care for F.C., which would have been an appropriate alternative to permanent placement with the agency, but the trial court disagreed. Consideration of placement of the child with a relative is not a statutory requirement. That possibility is a matter that ought to be considered in connection with the child's interaction and relationship with the child's parents, relatives, foster caregivers, out-of-home providers, and any other person who may significantly affect the child. R.C. 2151.414(D)(1)(a); *In re: C.W.*, Montgomery App. No. 20140, 2004-Ohio-2040.

{¶ 25} The paternal grandparents' relationship with F.C. is tenuous and minimal at best. They failed to routinely visit with F.C., even though the grandmother testified that while F.C.'s mother lived with her from March of 2007 until May 2008, she could

have visited with F.C. but did not because of her work. Between March 30, 2007, and July 20, 2008, the paternal grandparents visited with F.C. only one time. The paternal grandparents waited until the day before the second day of the permanent custody hearing before seeking custody of F.C.

{¶ 26} Much of the testimony of the paternal grandparents concerned whether they would continue to allow M.C. to live in their home if they were awarded custody of F.C. The evidence shows that in December 2008, a warrant was issued for M.C.'s arrest, and that prior to being arrested on that warrant in February 2009, M.C. resided in the paternal grandparents' home the entire time.

The paternal grandparents were aware of M.C.'s outstanding warrant. The grandmother did not ask M.C. to move because he had nowhere to go. Additionally, F.C.'s mother objected to placement with the paternal grandparents due to the grandmother's serious health issues and the pain medications she takes, as well as the fact that she fell asleep while smoking in her home and started a fire that burned her furniture. The paternal grandparents cannot insure the safety and welfare of F.C.

{¶ 27} With respect to the wishes of F.C., R.C. 2151.414(D)(1)(b), she is only two years of age and too young to articulate her custodial wishes. The guardian ad litem recommended legal custody be awarded to the paternal grandparents

if they explain their visitation absences and commit to prevent M.C., F.C.'s father, from living in their home after he is released from prison. If they do not do those things, then a grant of permanent custody to MCCS is recommended.

{¶ 28} Concerning the custodial history of the child, R.C. 2151.414(D)(1)(c), it is undisputed that F.C. has been in the custody of MCCS since she was one day old, and for more than twelve months out of a consecutive twenty-two month period, and that the foster parents have parented F.C. since she was two days old and desire to adopt her.

{¶ 29} With respect to the child's need for a legally secure permanent placement and whether that can be achieved without a grant of permanent custody to the agency, F.C. was in desperate need of a legally secure permanent placement. In that regard, the evidence demonstrates that F.C. has strongly bonded with her foster parents and that they have successfully parented F.C. for two years and have provided a loving and stable home for F.C. The foster parents wish to adopt F.C., and there is a reasonable expectation of adoption. As to the lack of other alternatives to permanent placement with the agency, we have already discussed the reasons why the trial court properly concluded that neither F.C.'s father, M.C., nor her paternal grandparents would be suitable custodians for F.C.

{¶ 30} In short, the trial court's findings support the conclusion that an award of permanent custody to MCCS was in F.C.'s best interest, and those findings are, in turn, supported by clear and convincing evidence in this record.

{¶ 31} M.C.'s assignment of error is overruled. The judgment of the trial court will be affirmed.

BROGAN, J. And FROELICH, J., concur.

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