

[Cite as *In re T.S.*, 2010-Ohio-3425.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94440

IN RE: T.S.

Minor Child

Appeal by
L.C.

**JUDGMENT:
AFFIRMED**

Appeal from the Cuyahoga County Court
of Common Pleas, Juvenile Division
Case No. AD 08937277

BEFORE: Sweeney, J., Rocco, P.J., and McMonagle, J.

RELEASED: July 22, 2010

**JOURNALIZED:
ATTORNEY FOR APPELLANT**

Judy M. Kowalski
333 Babbitt Road
Suite 323
Euclid, Ohio 44123

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
BY: Gina S. Lowe
Assistant Prosecuting Attorney
Cuyahoga County Department
of Children & Family Services
4261 Fulton Parkway
Cleveland, Ohio 44144

GUARDIAN AD LITEM

Susan Jankite
18615 Detroit Avenue
Lakewood, Ohio 44107

JAMES J. SWEENEY, J.:

{¶ 1} Appellant L.C. (“L.C.”)¹ appeals the court’s granting permanent custody of her nephew T.S. to the Cuyahoga County Department of Children and

¹The parties are referred to herein by their initials or title in accordance with this Court’s established policy regarding non-disclosure of identities in juvenile cases.

Family Services (“CCDCFS”). After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On August 26, 2008, T.S., who was 13 years old at the time, was committed to the emergency custody of CCDCFS. T.S. had been in the legal custody of his maternal aunt L.C., as his mother is deceased and his alleged father’s whereabouts are unknown. T.S. was in need of residential psychiatric treatment after “exhibiting destructive behaviors in the home,” such as starting fires, breaking lights, destroying furniture and clothes, excessively eating, and banging his head against the wall. T.S. was admitted to Laurelwood Hospital and later the intensive treatment unit at Parmadale. L.C. stipulated to the emergency custody.

{¶ 3} On September 30, 2008, L.C. admitted to the allegations in the complaint. T.S. was adjudicated dependent and committed to the temporary custody of CCDCFS. As part of the case plan, T.S. was to continue residential treatment at Parmadale, and L.C. was to participate in family counseling with T.S., with a goal of reunification.

{¶ 4} Between September 2008 and July 2009, L.C. visited T.S. at Parmadale three times. However, for various reasons, she did not participate in any of his counseling sessions. On July 23, 2009, T.S. was released from Parmadale, after making “significant progress,” and moved to a therapeutic foster home designed for children with behavioral issues.

{¶ 5} On August 24, 2009, CCDCFS filed a motion to modify temporary custody of T.S. to permanent custody, alleging that L.C. “refuses to comply with the case plan requirement and does not want to have the child returned to her custody.” The court held a hearing on November 2, 2009 and L.C. testified that she could not accommodate T.S. in her home at the time, and she would like temporary custody to be extended so T.S. can get the help he needs. The court granted permanent custody of T.S. to CCDCFS, finding that L.C. did not show “a whole lot of commitment and effort to follow up on the case plan.”

{¶ 6} L.C. appeals this order and raises four assignments of error for our review, which will be addressed together.

{¶ 7} “I. When a public children’s service agency filed a motion for permanent custody under O.R.C. 2151.414, the trial court erred by granting the motion when the child has been in custody less than one year and progress is being made.

{¶ 8} “II. The Juvenile Court abused its discretion in determining that clear and convincing evidence supported its decision to award permanent custody to [CCDCFS]; further, the award of permanent custody was against the manifest weight of the evidence.

{¶ 9} “III. The trial court erred to the prejudice of appellant by finding that permanent custody was in the best interests of the child.

{¶ 10} “IV. When the trial court is required to make a determination that public service agency made reasonable efforts to reunify the children with their

family, the trial court erred by ruling in favor of permanent custody when the record shows a failure to provide diligent case planning.”

{¶ 11} Permanent custody hearings are based on a two-part test. First, the court must determine whether the child can or should be placed with one of the parents within a reasonable time, under one of the four conditions listed in R.C. 2151.414(B)(1). In making this determination, the court shall consider whether the factors listed in R.C. 2151.414(E) exist as to each parent.

{¶ 12} In the second part of the test, the court must determine whether, by clear and convincing evidence, it is in the best interest of the child to be placed in the permanent custody of a moving party. In making this determination, the court shall consider the factors listed in R.C. 2151.414(D).

{¶ 13} The R.C. 2151.414(B)(1) conditions are as follows:

{¶ 14} “(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.

{¶ 15} “(b) The child is abandoned.

{¶ 16} “(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶ 17} “(d) 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 * * *.”

{¶ 18} In the instant case, the court made the following findings: T.S. was orphaned; none of T.S.’s relatives were able to take permanent custody; T.S. was in the temporary custody of CCDCFS for 12 or more of the last 22 months; one or more of the R.C. 2151.414(E) factors apply; T.S.’s mother is deceased; T.S.’s alleged father failed to establish paternity or contact T.S. since birth; T.S. was abandoned; CCDCFS was reasonable and diligent in its case planning efforts; and L.C. refused services as part of T.S.’s case plan. From these findings, the court determined that T.S. could not be placed with either parent within a reasonable amount of time, and it was in T.S.’s best interest to continue to reside in the therapeutic foster home.

{¶ 19} In reviewing the record, we find that CCDCFS took T.S. into custody on August 26, 2008, and permanent custody was granted to the agency on November 2, 2009. Therefore, contrary to L.C.’s first assignment of error, T.S. was in the agency’s custody for more than 12 of the prior 22 months. Accordingly, we find that the record supports the determination that, by clear and convincing evidence, T.S. could not be placed with either parent within a reasonable time.

{¶ 20} In determining the best interest of T.S. under R.C. 2151.414(D), there is evidence in the record that T.S. had no contact with his two older siblings,

although he expressed an interest in seeing his sister; he had a tenuous relationship with L.C.; and he had a positive relationship with his foster mother, who has specialized training to deal with behavioral issues. In addition, T.S.'s guardian ad litem ("the GAL") filed a report and testified at the hearing. The GAL did not support reunification with L.C. Rather, she suggested extending temporary custody to explore possible alternatives, such as a planned permanent living arrangement in the foster home. It is undisputed that, at the time of the hearing, a planned permanent living arrangement was not an option. The GAL testified that in the event temporary custody is extended, "if [T.S.'s] attitude and his thoughts and opinions regarding a relationship with his family [have] not changed, I will personally be leading the charge for permanent custody [to CCDCFS]."

{¶ 21} Furthermore, regarding L.C.'s fourth assignment of error, there is no requirement that the court determine whether CCDCFS made a reasonable effort for T.S. to return home in the instant case. A "reasonable effort" determination is not required when CCDCFS moves for permanent custody after having been granted temporary custody. *In re Z.T.*, Cuyahoga App. No. 88009, 2007-Ohio-827. We find that there is clear and convincing evidence in the record to support the determination that permanent custody is in the best interest of T.S.

{¶ 22} Having satisfied both prongs of permanent custody hearing determinations, we find that the court did not err in granting custody of T.S. to CCDCFS.

{¶ 23} Assignments of Error I, II, III, and IV are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas, Juvenile Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR