

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the matter of: B.O. and T.R.

Court of Appeals No. L-09-1133

Trial Court No. JC 07-164253

DECISION AND JUDGMENT

Decided: September 30, 2009

* * * * *

Mary C. Clark, for appellant.

David T. Rudebock, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellant mother and granted permanent custody of her two children to appellee Lucas County Children Services ("LCCS"). For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth the following assignments of error:

{¶ 3} "First Assignment of Error

{¶ 4} "The trial court's judgment that the requirements of O.R.C. § 2151.414(E) were satisfied was not supported by clear and convincing evidence.

{¶ 5} "Second Assignment of Error

{¶ 6} "The trial court's judgment that the requirements of O.R.C. § 2151.414(D) were satisfied was not supported by clear and convincing evidence."

{¶ 7} LCCS began working with this family in December 2006. At that time, appellant's children, B.O. and T.R., were eight years old and six years old, respectively, and were living with their maternal grandmother ("grandmother") because appellant was incarcerated. Because of appellant's pattern of repeated incarcerations since 1994, T.R. had lived his entire life with his grandmother; B.O. had lived with her mother only briefly. On January 17, 2007, LCCS filed a complaint in dependency and neglect. The children were immediately removed from grandmother's home due to grandmother's substance abuse and mental health issues and the fact that the home had been condemned. On February 22, 2007, the trial court found B.O. and T.R. to be dependent and neglected children and awarded temporary custody to one of their aunts. A case plan was approved with the goal of reunification with grandmother, since mother remained incarcerated.

{¶ 8} On July 2, 2007, interim temporary custody was awarded to the agency after the children's aunt moved away from the area; the order was changed to temporary custody on December 3, 2007. By this time, appellant was no longer incarcerated.

{¶ 9} On August 27, 2008, the agency filed a motion for permanent custody of the two children. Trial commenced on November 25, 2008, and was continued for further disposition on January 9, 2009. On February 6, 2009, the trial court conducted an in camera interview of the children.

{¶ 10} By judgment entry filed April 15, 2009, the trial court granted permanent custody of both children to Lucas County Children Services.

{¶ 11} Appellant's two assignments of error will be addressed together as they are interrelated. In support of her assignments of error, appellant asserts that the trial court's findings that the requirements of R.C. 2151.414(E) and 2151.414(D) were satisfied was not supported by clear and convincing evidence.

{¶ 12} In granting a motion for permanent custody, the trial court must find that one or more of the conditions listed in R.C. 2151.414(E) exist as to each of the child's parents. If, after considering all relevant evidence, the court determines by clear and convincing evidence that one or more of the conditions exists, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1). Further, pursuant to R.C. 2151.414(D), a juvenile court must consider the best interest of the child by examining factors relevant to the case including, but not limited to, those set forth in paragraphs (1)-(5) of subsection (D). Only if these findings are supported by clear and convincing evidence can a juvenile court terminate the rights of a natural parent and award permanent custody of a child to a children services agency. *In re William S.* (1996), 75

Ohio St.3d 95. Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶ 13} As to disposition in this matter, the record reflects that the trial court heard testimony from various individuals who had worked with the family since the case was opened, and received numerous documents in evidence.

{¶ 14} Donna Gregory testified that she worked with Connecting Point and had been the children's counselor on a weekly basis since July 2007. Gregory stated that she worked with the children primarily on adjustment issues. The children had begun to stabilize somewhat until October 2007, when their behavior with her began to "see-saw," depending upon whether or not they had recently visited with their mother or grandmother. At times they would shut down and not want to talk. Gregory testified that the children need closure and consistency.

{¶ 15} Jacqueline Harris testified she had been the family's caseworker since December 2006, when the children were still in their grandmother's home. Harris stated that after the children were removed from grandmother's home in January 2007, the agency offered case plan services to grandmother to address her alcohol and drug problems as well as mental health issues. To Harris' knowledge, grandmother had not completed any of the recommended services. Grandmother was referred to substance abuse assessment and as a result it was recommended that she enroll in treatment. She was referred to COMPASS but she never completed the program. She also was referred

to Family Services of Northwest Ohio but was discharged for noncompliance with services by that agency. The agency also referred grandmother to the Joint Venture program at Unison to address substance abuse and mental health issues, but she failed to comply with the program.

{¶ 16} When mother was released from prison in October 2007, she contacted Harris. The agency then recommended anger management classes and counseling. Appellant did not attend anger management classes but did engage in mental health counseling for awhile. By the time of the final hearing, appellant's counseling plan had been discontinued for noncompliance. Appellant also failed to comply with requests to drop urine screens on five occasions. Appellant later was referred to another diagnostic assessment where it was again recommended that she attend anger management classes and address her mental health issues. She missed anger management counseling appointments in August and September 2008, and missed an appointment with a nurse to monitor her mental health medication on one occasion.

{¶ 17} Appellant's anger management case was ultimately closed for noncompliance. Although not initially referred for substance abuse treatment, appellant tested positive and acknowledged that she used marijuana in December 2007. She was referred to a substance abuse assessment, which she failed to attend. Appellant was ordered to submit drug screens in January, March, July, August, and October 2008, but failed to submit any of them.

{¶ 18} Harris testified that appellant had been living in grandmother's house, which had been condemned. The agency had concerns regarding appellant living with grandmother because of grandmother's ongoing drug issues and reports that drugs were being sold out of the house. Grandmother reported at a case review in July 2008, that drugs were being sold in her home and stated that she had asked appellant to leave. Harris testified, however, that grandmother retracted those statements when the case was in mediation. Harris further testified that appellant was visiting her children, although not consistently, usually missing one visit each month. Grandmother's visits were sporadic.

{¶ 19} Harris testified that the father of B.O. was incarcerated and would not be released until 2013. The agency's attempts to contact T.R.'s father had been unsuccessful.

{¶ 20} Harris further testified that appellant no longer had custody of her four other children, all of whom are older than B.O. and T.R. She stated that the agency believed permanent custody was in the children's best interest in light of various safety issues stemming from grandmother's home being condemned; grandmother's drug issues and failure to address her mental health issues; grandmother's other physical limitations; appellant's failure to address mental health and drug issues and appellant's lack of stable housing.

{¶ 21} Harris also testified that appellant had been incarcerated repeatedly for the past ten to 12 years. She believed that T.R. had been in his grandmother's custody since birth. The agency has made attempts to place the children with relatives although it has

not been able to identify any possible placements. To the best of Harris' knowledge, at the time of the hearing appellant and her husband were still living with grandmother and appellant's husband was selling OxyContin out of grandmother's home.

{¶ 22} Appellant testified that she was released from prison in October 2007, after two and a half years incarceration. She understood that her case plan required her to stay drug free, attend counseling and visit her children weekly. Appellant testified that she was on medication for mood swings and was receiving counseling at Unison. Appellant stated she did not want to lose custody of her children and believes she is in a position to care for them with ongoing services. She stated that she has been incarcerated five times. Her ten-year-old daughter B.O. was born while appellant was incarcerated and has lived with her for a total of 19 months. She testified that T.R. had lived with her for the first five years of his life although, based on the dates of her multiple incarcerations as evidenced by the record, that would not have been possible. Appellant further testified that she had a 20-year history of marijuana use and that the last time she used was December 2007. Appellant was not currently employed.

{¶ 23} Grandmother testified that she lied when she stated that appellant's husband was selling drugs. She believes that appellant is now capable of caring for her children and said she would be willing to help her daughter if necessary.

{¶ 24} The trial court heard testimony from CASA-guardians ad litem Kathy Lehman and Trudy Stoner, who had been visiting the children at least once each month since January 2007. Lehman testified that B.O. and T.R. are very bonded to one another.

She visited appellant's home the day before the hearing and found it to be clean and suitable. Lehman further testified that the children want to live with their mother. She believes that it would be best for the children to remain in their foster home where they are doing well but to continue to have contact with their biological family. Lehman testified that she is concerned because T.R. looks up to his older brothers, all of whom have been in jail, and said T.R. told her he wants to go to jail, too. She recommends an award of permanent custody to the agency, despite acknowledging that the current foster family does not want to pursue adoption, which eventually would lead to further disruption for the children. Trudy Stoner agreed that the children are bonded to each other and to their mother. Stoner also testified that she believed that an award of permanent custody to LCCS would be best for the children in terms of their future stability.

{¶ 25} This court has thoroughly reviewed the record of proceedings in this case, beginning with the family's initial involvement with the agency in 2006, through the hearing on the motion for permanent custody and the trial court's decision. Contrary to appellant's arguments, we find that the judgment entry in this case addresses all of the relevant statutory factors in detail and that the trial court's findings are supported by clear and convincing evidence.

{¶ 26} This court notes that neither child's father has appealed the trial court's decision. T.R.'s alleged father's whereabouts were unknown throughout the pendency of this case and the trial court found, pursuant to R.C. 2151.414(B)(1)(a) and (E)(14), that

he was unwilling to provide food, clothing, shelter and other basic necessities for his child. The trial court further found that B.O.'s father was serving a six-year prison sentence at the time of the filing of the motion for permanent custody and would not be available to care for the child for at least 18 months after the filing of the motion. R.C. 2151.414(B)(1)(a) and (E)(12).

{¶ 27} Pursuant to R.C. 2151.414(B)(1)(a) and (E)(1), the trial court found that appellant had failed to remedy her substance abuse issues and had not successfully participated in parenting classes.

{¶ 28} Pursuant to R.C. 2151.414(B)(1)(a) and (E)(4), the trial court found that appellant has demonstrated a lack of commitment toward her children by failing regularly to support, visit or communicate with them when she was able to do so. The trial court noted that appellant had missed numerous visits and had been placed on a one-hour wait to ensure her attendance prior to the children's arrival.

{¶ 29} The trial court further found, pursuant to R.C. 2151.414(B)(1)(a) and (E)(14), that appellant has been repeatedly incarcerated, which prevented her from providing care for the children. The trial court found that the children had spent the past two years of their lives in substitute care due to appellant's most recent incarceration.

{¶ 30} Additionally, the trial court found that appellant has six biological children and that none of them are currently in her custody. R.C. 2151.414(B)(1)(a) and (E)(16).

{¶ 31} The trial court also found that the children are in need of a permanent, stable, predictable environment, which appellant has failed to demonstrate she can

provide. Finally, based on its in camera interview with both children, the trial court found that their expressed desire to return to their mother's home was based on unrealistic hopes and dreams as to what it would be like to live with her.

{¶ 32} Based on all of the foregoing, including witness testimony, the parties' stipulations, exhibits and other matters of record, the trial court found that there was clear and convincing evidence that the children cannot and should not be placed with either parent within a reasonable period of time. The trial court further found, pursuant to R.C. 2151.414(D), that it is in the best interest of the children to award permanent custody to LCCS.

{¶ 33} Based on our review of the record as summarized above, we find that the trial court's decision was supported by clear and convincing evidence that an award of permanent custody to LCCS was in the best interest of B.O. and T.R. Accordingly, appellant's first and second assignments of error are not well-taken.

{¶ 34} On consideration whereof, this court finds that substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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