[Cite as *In re R.B.*, 2010-Ohio-4710.]

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

In the Matter of: R.B.

Court of Appeals No. L-09-1274

Trial Court No. JC 09195474

DECISION AND JUDGMENT

Decided: September 30, 2010

* * * * *

Dan M. Weiss, for appellant.

Jeremy Young, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant, E.B., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating her parental rights to R.B. Appellant's counsel has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, asserting that there are no meritorious issues for appeal. We have found that "the procedures enunciated in *Anders* are applicable to appeals involving the termination

of parental rights." *Morris v. Lucas Cty. Children Serv. Bd.* (1989), 49 Ohio App.3d 86, 87.

{¶ 2} In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. 386 U.S. 738, 744. In the instant case, counsel has accompanied his request to withdraw with a brief identifying anything in the record that could support the appeal, and has furnished his client with a copy of the brief and the request to withdraw as required under *Anders*. *Id*. Appellant has not set forth a brief. Appellant's counsel sets forth the following potential assignment of error:

{¶ 3} "The appellant [*sic*][1] did not make reasonable efforts to prevent the removal of the child and offer case plan services with a goal of reunification and improperly granted permanent custody to appellee."

{¶ 4} R.B. was born on May 18, 2009, and tested positive for both opiates and methadone at his birth, which resulted in the initial referral to the Lucas County Child Services Board ("LCCS").

{¶ 5} On June 24, 2009, LCCS filed a complaint for original permanent custody of R.B., along with a motion for shelter care. An evidentiary hearing was held the next day at which time appellee was granted temporary custody of R.B. Appellant was not present at the hearing.

[1]Note that the assignment of error states that appellant did not make reasonable efforts where it should read appellee.

{¶ 6} A pre-trial hearing was set for July 16, 2009, and an adjudicative/ dispositional hearing was set for August 10, 2009. On July 6, 2009, appellee published a summons for both hearings for appellant and her spouse, R.B.'s purported father, as their whereabouts were unknown and previous attempts to contact them had been unsuccessful. Appellant was not present at either hearing.

{¶ 7} At the August 10, 2009 hearing, appellant's counsel indicated that she had not spoken with appellant, despite several attempts to get in contact with her. Counsel did state that appellant had left her a phone message indicating her desire to gain custody of her son, but the phone number appellant had provided was disconnected and counsel was thus unable to return her call. The trial court did not allow appellant's counsel to withdraw from representation because appellant had contacted counsel to request custody of her child.

{¶ 8} At trial, Kelly Crampton, an assessment caseworker with LCCS, testified that R.B. was hospitalized for over one month due to in utero drug exposure which required he be placed on a methadone drip, and that upon his release he was given methadone drops so that treatment for his addiction could be continued after discharge. Crampton also testified that appellant had lost permanent custody of her three older children as a result of chronic heroin use.

{¶ 9} Further, Crampton testified that appellant's obstetrician had admitted her to the hospital almost a month before R.B.'s birth in an attempt to curb appellant's drug use. Crampton stated that hospital staff indicated that despite these efforts, appellant would

disappear for hours and come back wearing dark sunglasses and holding onto the wall. Crampton also testified that appellant was not given anything by medical personnel that would have caused a positive result on an opiate screen, yet R.B. tested positive at his birth.

{¶ 10} Appellant frequently visited R.B. during his stay at the hospital, but several incidents resulted in her being banned from the hospital for visitation. Crampton testified that appellant was found "rifling through" the NICU carts on more than one occasion, and would often visit late at night, wearing dark sunglasses and holding onto the wall. On one occasion, appellant was holding R.B. and almost passed out, at which point staff requested she leave the hospital. On May 28, 2009, there was an incident at the hospital where appellant had broken a lock on a window and attempted to enter a clerk's office, where she was found going through the NICU filing cabinets. Crampton testified that at that point medical staff and security decided to ban appellant from visiting R.B.

{¶ 11} Crampton met with appellant once at the hospital, and after that she received one voice message from appellant inquiring what she needed to do to be with R.B. and stating that she would call Crampton again. Crampton received another message from appellant on June 24, 2009, the day the complaint was filed for emergency shelter care, wanting to know what was going on with the case and wanting to be involved. Appellant had left an address in her message, and Crampton went there in an attempt to contact appellant and give her notice of the shelter care hearing the next day. Appellant was not present when Crampton arrived, but Crampton left the notice with

appellant's spouse and later received a message from appellant stating that she had received the notice. Appellant did not show up for the hearing the following day.

{¶ 12} Linda Rosenbloom was assigned as the ongoing case worker from LCCS for R.B. in June 2009. She attempted to visit appellant at the address appellant had given Crampton, along with a CASA representative, but was told that appellant no longer lived there. Rosenbloom never had any contact with appellant. Rosenbloom testified that R.B. was placed in a foster home, and that he was thriving in the foster parents' care and had bonded with the family. At the time of the hearing, R.B. was still on methadone drops for his addiction and had weekly doctor's appointments to which his foster family took him faithfully. Rosenbloom testified that she felt granting permanent custody to LCCS was in R.B.'s best interest as he was well integrated into his foster home, and his foster parents were very committed to attending to his medical needs.

{¶ 13} Kathy Lehman was appointed as the CASA/GAL for R.B. in early July 2009 to conduct an independent investigation. Lehman attempted to contact appellant by visitation, by phone at the number appellant had given the hospital, and Lehman also contacted appellant's counsel, who had not heard from her. Lehman was able to visit R.B. in his foster home and stated that he appeared to be doing very well, and that she had no concerns about his placement with the family. She said that all of his needs were being met and that she recommended that LCCS receive permanent custody as it was in R.B.'s best interest.

{¶ 14} At the conclusion of the August 10, 2009 hearing, the court awarded permanent custody of R.B. to LCCS. Having reviewed the entire record, we proceed to determine whether any arguable issues exist for appeal. *Anders*, 386 U.S. at 744.

{¶ 15} The trial court found R.B. dependant and neglected by clear and convincing evidence. R.C. 2151.414 provides that a parent's rights may not be terminated unless the court finds evidence that (1) the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and (2) that a grant of permanent custody of a child to a children's service agency is in the child's best interest. With respect to the first requirement, R.C. 2151.414(E) sets out criteria for determining findings that the child cannot or should not be placed with a parent. In the case of R.B., the court made several findings supporting the conclusion that he could not or should not be placed with his parents. As described in subsection (E)(1), neither parent had remedied the problems that resulted in R.B.'s removal in the first place. Pursuant to subsection (E)(2) there is chronic mental illness and chronic chemical dependency that makes both parents unable to provide for R.B. Lastly, under subsection (E)(11), appellant has had her parental rights terminated to R.B.'s three older siblings.

{¶ 16} Under subsection (E)(10), the court determined R.B. was abandoned as neither parent had demonstrated any commitment to him through either regular visits or support. Although appellant visited R.B. during his hospital stay, she made no attempt to visit him from the time she was banned from hospital visitation. However, R.C. 2151.011(C) states that a presumption of abandonment will be made when the parents

have failed to visit or make contact for 90 days, even if they initiate contact after that period of time. As of the time of trial, appellant had not made any attempt to contact or visit R.B. for 74 days. However, this distinction of whether or not R.B. was abandoned is irrelevant considering there are several other factors supporting the court's determination that R.B. could not and should not be placed with his parents within a reasonable time. Even if R.B. was not yet abandoned, there was still clear and convincing evidence in the record to support the court's decision.

{¶ 17} R.C. 2151.414(D) sets forth the standard for determining whether permanent custody would be in the child's best interest. The court found that pursuant to subsection (D)(1)(a), the interaction between R.B. and both his caretakers and the children in his foster home was very positive, and thus permanent custody to LCCS was in his best interest. Also, under subsection (D)(1)(d), there was a need for a legally secure, permanent placement for R.B. and this was very unlikely to occur with his parents at any time in the near future as their whereabouts were not even known and the substance abuse issues resulting in R.B.'s removal were not resolved, nor did it appear that any effort was being made by appellant to resolve them.

{¶ 18} The findings of the trial court will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established. *In re S.* (1995), 102 Ohio App.3d 338, 344-345. In this case, it is clear that the record contains competent, credible

evidence to support the court's belief that the statutory elements for termination have been met. Appellant made no effort to have contact with R.B. and she failed to appear for any of the hearings relevant to his custody. R.B. was born with a chemical dependency on methadone due to appellant's drug use while she was pregnant which required extensive medical treatment for him after birth. This same drug use by appellant previously led her to lose custody of her three older children. Appellant has shown no noticeable progress or effort in resolving the problems that have led her to lose custody of her three older children and R.B. It is a matter of fact that at the time of trial, appellant's whereabouts were unknown and even her own counsel had no significant contact with her by that time. The court properly found that R.B. cannot and should not be placed with appellant within a reasonable time, and that a legally secure, permanent placement cannot be achieved for R.B. without a grant of permanent custody to LCCS.

{¶ 19} Appellant alleges that LCCS did not make enough effort to avoid permanent removal of R.B. and that case plan services should have been offered to appellant with the goal of reunification with the child.

{¶ 20} The evidence in this case shows that appellant failed to appear at any proceedings despite the fact that she was properly served and in at least one case admittedly received notice. LCCS caseworkers, the CASA/GAL, and appellant's own counsel all made several attempts to contact her to involve her in the case with no success. Appellant made no efforts to see R.B. once she was banned from visitation at the hospital during his stay.

{¶ 21} This lack of contact, coupled with testimony as to appellant's conduct in the hospital and R.B.'s positive drug screen for methadone and opiates, suggest that appellant has done nothing to remedy her chronic drug dependency that resulted in her losing custody of her three older children.

{¶ 22} R.B.'s positive drug screen resulted in a referral to LCCS at the time of his birth. There was no opportunity on the part of the agency to prevent removal of the child due to appellant's drug use during her pregnancy. All evidence presented showed that appellant did nothing to show that the issue of her chronic chemical dependency was resolved, nor that she was making any effort to resolve it. LCCS made several attempts to contact appellant, and was unsuccessful in all of its efforts; in fact, appellant's own counsel was not able to successfully contact her. Even had a case plan been appropriate, the agency would have no means of implementing such when appellant was unreachable and made no attempts of her own to contact the agency other than to leave a few voice messages with no adequate contact information for the agency to get back to her.

{¶ 23} Further, R.C. 2151.419(A)(2) gives requirements for determining whether an agency made reasonable efforts to prevent removal of a child from the home. The statute gives five circumstances where, if any single one is found to be true, the court must determine that the agency was not required to make reasonable efforts to prevent the removal of the child. In the instant case, subsection (e) applies as appellant had already had her parental rights involuntarily terminated with respect to her three older children.

This eliminated the need for LCCS to make any reasonable efforts to prevent the removal of R.B.

{¶ 24} Even had LCCS been able to get in contact with appellant to form a case plan, it was not necessary for them to do so as LCCS had filed for original permanent custody. The Ohio Supreme Court has held that a reunification case plan is not necessary where a child services agency seeks original permanent custody of the child. *In re Baxter* (1985), 17 Ohio St.3d 229. This court has followed that ruling, stating "it is well-established that where a children services agency seeks original permanent custody of a child pursuant to R.C. 2151.353(A)(4), the agency is not required to establish a case plan. See *In the Matter of: Misty B.* (Sept. 17, 1999), Lucas App. No. L-98-1431, unreported; *In the Matter of: Stephanie H.* (Sept. 17, 1999), Huron App. No. H-99-009, unreported." *In re Demetrius H.* (March 9, 2001), 6th Dist. No. L-00-1300.

{¶ 25} Based upon the evidence presented in the record, LCCS had no duty to make reasonable efforts to prevent the removal of R.B. or offer case plan services with the goal of reunification. Further, the decision of the trial court to grant permanent custody of R.B. to LCCS was supported by clear and convincing evidence. Appellant's potential assignment of error is found not well-taken.

{¶ 26} Upon our own independent review of the record, we find no other grounds for a meritorious appeal. Accordingly, appellant's appeal is found to be without merit and is wholly frivolous. The motion to withdraw by counsel for appellant is well-taken and hereby granted.

{¶ 27} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating appellant's parental rights to R.B. 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.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE