

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN THE MATTER OF: :
S.B.T., et al. : CASE NOS. CA2009-04-110
CA2009-04-114
:
: OPINION
: 10/2/2009
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JN2006-0678

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BRESSLER, P.J.

{¶1} Appellant, Wendy T., appeals the decision of the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody of two minor children to appellee, Butler County Department of Job and Family Services (BCDJFS).

{¶2} Appellant is the biological mother of S.T. and A.T. The children's biological

father is not a party to this appeal. On November 3, 2006, BCDJFS filed a complaint, alleging S.T. and A.T. to be dependent and neglected. The complaint alleged that the children were removed by Fairfield police officers after appellant left the children in the care of their 16-year-old sibling who had been staying home from school for weeks to watch them. In the complaint, a BCDJFS caseworker noted that there was no food or diapers for the children in the home, and the older sibling reported to the caseworker that they usually don't have food in the home. The caseworker also noted that the older sibling told her that appellant's cell phone had been disconnected and the child had no way to reach appellant. Also, the caseworker stated that the Hamilton County Department of Job and Family Services had been involved with this family in the past due to appellant's failure to supervise the older sibling when he was younger, and that appellant had been charged with child endangering on two occasions. After an ex parte hearing, the juvenile court awarded emergency temporary custody of the children to BCDJFS.

{¶3} On February 28, 2007, the children were adjudicated dependent. In addition, the juvenile court adopted a case plan to reunify appellant with the children, which required appellant to undergo substance abuse and psychological assessments, complete parenting classes, and obtain and maintain employment and proper housing. The juvenile court noted in its entry that appellant voluntarily agreed to complete case plan services.

{¶4} In October 2007, appellant's visitation with the children was liberalized to unsupervised visitations and in February 2008 she was permitted to keep the children for overnight visits. However, on June 13, 2008 appellant was arrested and incarcerated for driving under suspension and for violating court orders. At this time, the children were removed and returned to foster care, and the juvenile court suspended appellant's parenting time.

{¶5} On July 3, 2008, BCDJFS moved for permanent custody. After hearings on the

motion, the juvenile court magistrate granted BCDJFS's motion for permanent custody on January 21, 2009. Appellant objected to the magistrate's decision and the juvenile court overruled the objections and adopted the magistrate's decision as its final appealable order. Appellant appeals the juvenile court's decision, raising the following assignment of error:

{¶6} "THE TRIAL COURT'S DECISION TO PLACE THE CHILDREN IN THE PERMANENT CUSTODY OF BUTLER COUNTY WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE."

{¶7} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶8} R.C. 2151.414(B) requires the juvenile court to apply a two-part test when terminating parental rights and awarding permanent custody to a children services agency. Specifically, the court must find that: (1) the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D); and, (2) any of the following apply: the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; the child is abandoned; the child is orphaned; or the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re Schaefer*, 111

Ohio St.3d 498, 2006-Ohio-5513, ¶¶31-36; *In re Ebenschweiger*, Butler App. No. CA2003-04-080, 2003-Ohio-5990, ¶9.

{¶9} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that the children are dependent, and have been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period as of the date BCDJFS filed the permanent custody motion. However, appellant does dispute the juvenile court's finding that granting permanent custody of the children to BCDJFS is in the children's best interest.

{¶10} R.C. 2151.414(D) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶11} "(1) 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;

{¶12} "(2) 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;

{¶13} "(3) 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 ending on or after March 18, 1999;

{¶14} "(4) 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;

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

{¶16} With respect to R.C. 2151.414(D)(1), the juvenile court found that after the children were removed from appellant's custody, appellant attended visitations with the children but did not do so consistently. Eventually, the court liberalized visitations to unsupervised visits and then permitted overnight visits. However, appellant was incarcerated following her arrest for driving under suspension, and the children were again removed from her custody. The court noted that the children are bonded with their mother. Further, the court noted that during a supervised visitation after visitations resumed following appellant's release from incarceration, A.T. initially did not want to go to appellant but eventually did so after encouragement from the foster mother.

{¶17} The juvenile court found that the children have resided in the same foster home since their removal on November 2, 2006, and that their older sibling also lives in the same foster home as part of a planned permanent living arrangement. The court also found that the children are bonded with each other and with their older sibling. The court noted that the guardian ad litem (GAL), BCDJFS caseworker, and the children's older sibling all agree that the children are bonded with their foster mother and her extended family. Also, the foster mother testified that she will consider adopting the children if BCDJFS's permanent custody motion is granted.

{¶18} With respect to R.C. 2151.414(D)(2), the juvenile court indicated that it did not conduct an in camera interview with the children, but that it did consider the report of the GAL. The GAL did consider placement of the children with appellant's family friend, Barbara Sanders, but ultimately recommended granting permanent custody of the children to BCDJFS.

{¶19} With respect to R.C. 2151.414(D)(3), the juvenile court found that at the time BCDJFS filed the complaint, the children have been in BCDJFS's custody for more than 12 months of a consecutive 22-month period preceding the filing of the permanent custody

motion.

{¶20} With respect to R.C. 2151.414(D)(4), the juvenile court found that the children are in need of legally secure permanent placement as they have resided in foster care or alternative care for approximately two years while this case has been pending. The court found that appellant has failed to demonstrate that she can provide stable care for the children. The court noted that the children were removed from appellant's care after she failed to provide adequate day-care for her children while she was at work. The court also found that appellant left the children with their 16-year-old sibling without food and bedding, and without any way for the older sibling to contact her while she was working. Further, the court found that the older sibling missed school for two weeks because he needed to watch the children. In addition, the court noted appellant's prior history with the Hamilton County Department of Job and Family Services for failing to provide adequate care for the children's older sibling when he was younger.

{¶21} The juvenile court noted that appellant initially made some progress in the case plan for reunification by maintaining stable employment and housing. However, at a hearing on the permanent custody motion, appellant indicated she was residing temporarily with a friend in Hamilton County and had no documentation to verify her stated intention to rent a home in Hamilton County. The court also found that despite appellant's ability to obtain employment, she has not been able to maintain that employment. Further, the court noted that in February 2008 appellant did apply and was approved for subsidized day-care for the children, but that she failed to actually arrange for anyone to provide the day-care services.

{¶22} The juvenile court also expressed its concern over appellant's failure to communicate consistently. As described above, when the children's older sibling watched the children in appellant's home, appellant failed to provide him with a phone number where she could be reached, and appellant failed to communicate effectively with the court as to the

status of day-care arrangements for the children. The court noted that during this case appellant changed her phone number several times without notifying the BCDJFS caseworker, which ultimately prevented the caseworker from arranging for appellant to participate in a recommended parenting course. After appellant was released from jail on August 19, 2008, appellant failed to communicate with the caseworker until September 9, 2008 as to where she would be living. Further, appellant failed to attend multiple visitations without notifying anyone. The court was also concerned over appellant's failure to notify the court of a Butler County Area III Court order suspending her driving privileges and imposing house arrest. The court noted that the children were in appellant's car when she was arrested for failing to comply with these orders, and the foster mother testified as to how the children were traumatized by witnessing her arrest. The foster mother also testified that the children's behavior was out of control when they first came to live with her, and that they broke and tore up things. She also explained that S.T.'s behavior was especially aggressive, he used profane language and had a speech delay.

{¶23} The juvenile court also considered the testimony and reports of Dr. Rebecca Brewer and Dr. Joseph Lipari, who separately conducted psychological evaluations of appellant. Dr. Brewer diagnosed appellant with Histrionic Personality Disorder, and explained that she exhibited a high level of defensiveness and blamed situational factors for her problems. Dr. Brewer stated in her report that appellant has poor problem solving abilities, she is satisfied with herself and is not motivated to change, and does not feel obligated to anyone. Dr. Lipari diagnosed appellant with Antisocial Personality Disorder with histrionics, which he explained is characterized by failure to adhere to social norms, the tendency to act impulsively, irresponsibly, and irritable, the failure to plan ahead, and disregard for the safety of others. Dr. Lipari testified that this disorder would have a negative impact on appellant's ability to parent, and his prognosis for appellant's ability to successfully

parent is guarded. Dr. Lipari explained that in time, if appellant can remain sober, obtain stable employment and residence, and address her legal and financial issues, and if she can consistently improve her parenting skills through supervised visitations and then unsupervised visitations, reunification with the children could be considered. Despite this prognosis, the juvenile court found that appellant has had over two years to accomplish these goals and that she has had enough time to demonstrate she is committed to or capable of making these necessary changes in her life.

{¶24} The juvenile court also considered Sanders, who is appellant's friend, as a potential placement option. However, the court found that Sanders has not had much contact with the children within the past two years and that it is not in the children's best interest to separate them from their older sibling and remove them from a foster home in which they are thriving to place them with a nonrelative.

{¶25} In addition, the juvenile court considered R.C. 2151.414(E)(1), which provides:

{¶26} "Following the placement of the child outside his home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly for a period of six months or more to substantially remedy the conditions causing the child to be placed outside his home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties."

{¶27} With respect to this factor, the juvenile court found that appellant completed psychological and substance abuse evaluations. The court further noted that no concerns have been raised about appellant's use of drugs or alcohol during this case. Appellant also

participated in parenting classes at the agency, but the caseworker recommended an in-home parenting program because appellant wasn't demonstrating implementation of the lessons presented at the agency. When an opening became available for one of these programs, the caseworker could not reach appellant because appellant had changed her phone number without notifying BCDJFS as indicated above. When the caseworker saw appellant in-person, she informed appellant of the opening and asked appellant to contact her to schedule the initial appointment. Soon after, appellant was arrested and incarcerated and has been unable to participate in the program since her release from incarceration as the program requires appellant to be living in her own residence. Despite slight initial progress with the case plan, the juvenile court found that appellant has failed continuously and repeatedly to substantially remedy the conditions which led to the removal of the children.

{¶28} In finding that granting permanent custody of the children to BCDJFS is in their best interest, we find the juvenile court thoroughly analyzed the evidence and testimony from the permanent custody hearings, and further find that the juvenile court's findings are supported by sufficient clear and convincing evidence. As an appellate court reviewing a decision granting permanent custody, we neither weigh the evidence nor assess the credibility of the witnesses, but instead determine whether there is sufficient clear and convincing evidence to support the juvenile court's decision. See *In re Dunn*, Tuscarawas App. No.2008AP030018, 2008-Ohio-3785. As the juvenile court indicated, while appellant made some progress in the case plan, her decision to disobey court orders and subsequent arrest, along with her failure to obtain stable employment and housing, as well as her deficiencies in communication have significantly hindered her reunification efforts. The minimal progress appellant made in the case plan does not create sufficient conflict in the evidence to conclude the juvenile court's decision was not in the best interest of the children, given the need for safety and stability in the children's lives.

{¶29} Appellant's assignment of error is overruled.

{¶30} Judgment affirmed.

POWELL and YOUNG, JJ., concur.

[Cite as *In re S.B.T.*, 2009-Ohio-5262.]