

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

IN THE MATTER OF:	:	O P I N I O N
SHILAR SALSGIVER,	:	
DEPENDENT CHILD	:	CASE NO. 2002-G-2412
	:	
	:	
	:	

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 00 JN 000676

Judgment: Reversed and remanded.

Paul H. Hentemann, Northmark Office Building, 35000 Kaiser Court, #305, Willoughby, OH, 44094 (For Appellant, James Geisert, Father)

David P. Joyce, Geauga County Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH, 44024 (For Appellee, Geauga County Job and Family Services)

Chuck Vergon, Court Appointed Special Advocate, 215 Main Street, STE. 2-A, Chardon, OH, 44024 (Guardian ad litem)

ROBERT A. NADER, J.

{¶1} This is an appeal of the judgment of the Geauga County Court of Common Pleas, Juvenile Division, terminating the parental rights of appellant, James Geisert, and Ruth Salsgiver (“Ruth”), and granting permanent custody of Shilar Salsgiver (“Shilar”) to appellee, Geauga County Job and Family Services.

{¶2} On December 13, 2000, appellee filed a complaint alleging that Shilar, who was then five months old, was a dependent and neglected child. At the same time, appellee filed a motion requesting an emergency, ex parte, order of temporary custody of Shilar because Ruth had been hospitalized for an overdose and the identity of Shilar's father was unknown. The court granted appellee's ex parte motion.

{¶3} On February 15, 2001, the trial court held a hearing on appellee's complaint. At the hearing, appellee amended the complaint to remove the neglect charge, and Ruth pleaded true to the charge that Shilar was a dependent child. The court also recognized appellant as Shilar's father, who, although he entered a plea of "not true", did not object to the court finding the allegation true based upon Ruth's plea.

{¶4} Following the hearing, the court adopted the case plan presented by appellee, with the exception of a provision requiring appellant to attend anger management counseling, which the court deleted. The case plan required appellant to complete a mental health assessment and follow the recommendations of the mental health counselor. The case plan required that Ruth: attend anger management classes and follow the counselor's recommendations; complete a drug and alcohol assessment and follow the recommendations of the assessment; cooperate with drug and alcohol testing; complete a mental health assessment and follow the recommendations of the mental health counselor; and, work with an income maintenance worker and follow the recommendations of the income maintenance worker. The plan stated that both parents would be provided at least two hours per week of supervised visitation with Shilar.

{¶5} Following a dispositional hearing, the trial court continued appellee's temporary custody of Shilar. In its judgment entry, the court also ordered appellee to amend the case plan to specify that if appellant wanted to be considered for custody of Shilar he would have to take age appropriate parenting classes, have a home study completed, and exercise visitation regularly.

{¶6} On November 19, 2001, appellee filed a motion for permanent custody of Shilar. Appellant and Ruth appeared at the hearing, on January 16 and 23, 2002, and presented evidence. At the permanency hearing, Laura Auer ("Auer"), a permanency planning worker, testified that appellant missed several deadlines for submitting records required for a home study. When appellant's records were finally complete, days before the, January 16, 2002, permanency hearing, Auer visited appellant's home and found problems.

{¶7} Danielle Coward ("Coward"), the social worker assigned to Shilar's case, until August 2001, testified that appellant reported to her that he had begun his mental health assessment, in April 2001, but did not remember who his counselor was. When Coward investigated, she discovered that appellant had begun the assessment, but had never finished it.

{¶8} Tia Phillips ("Phillips"), the social worker assigned to Shilar's case, after August 2001, testified that appellant told her that he had completed his mental health assessment, in October 2001, but, because he had not signed a release, Phillips did not receive the evaluation, until November 2001. Phillips also testified that she gave appellant information on parenting classes, in December 2001. Appellant, however, had not taken the classes by the date of the hearing, in January 2002. Appellant

testified, however, that he had signed up for a parenting class, on January 22, 2002, the day before the second day of the permanency hearing.

{¶9} Following the hearing, the trial court awarded permanent custody of Shilar to appellee and terminated the parental rights of Ruth and appellant.

{¶10} Appellant filed a timely appeal raising the following assignment of error:

{¶11} “The trial court erred in determining that granting permanent custody to the county was in the best interest of the child.”

{¶12} Appellant argues that the trial court, in its judgment entry granting permanent custody to appellee, failed to discuss all of the factors listed in R.C. 2151.414(D).

{¶13} Under R.C. 2151.414(B)(1), before a court can grant permanent custody of a child to an agency, the court must find, by clear and convincing evidence, that (1) it is in the best interest of the child to grant permanent custody of the child to the agency, and (2) any of the following situations exists:

{¶14} “(a) The child is not abandoned or orphaned or 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 ending on or after March 18, 1999, 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 ending on or after March 18, 1999.” R.C. 2151.414(B)(1).

{¶18} Appellant’s assignment of error deals with the court’s determination of Shilar’s best interest. R.C. 2151.414(D) provides, in relevant part:

{¶19} “In determining the best interest of a child *** the court shall consider all relevant factors, including, but not limited to, the following:

{¶20} “(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;

{¶21} “(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;

{¶22} “(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;

{¶23} “(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;

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

{¶25} This court has held that the juvenile court must consider all the R.C. 2151.414(D) factors when making a determination of the best interest of a child in a permanent custody hearing. *In re Bailey* (July 20, 2001), 11th Dist. No. 2001-G-2340, 2001 Ohio App. LEXIS 3293, at *13. “Failure to discuss each of these factors when determining the best interest of the child is prejudicial error. Thus, the record must show that the juvenile court considered all of the factors enumerated in R.C. 2151.414(D) when reaching its judgment, however, no one factor is dispositive.” (Internal citations omitted.) *Id.*, at *14-15.

{¶26} The trial court’s judgment entry states that the court considered all the factors set forth in R.C. 2151.414(D). A review of the record, however, reveals that the court did not adequately discuss the interaction and interrelationship of Shilar with Ruth. The court discussed, albeit briefly, Shilar’s relationship with her foster parents, and with appellant, but did not discuss her relationship with Ruth, her mother. Certainly in a case involving the termination of parental rights, a consideration of the child’s relationship with her mother is not only relevant, but also indispensable. Failing to discuss this relationship was prejudicial error. See *In re Ethington* (July 23, 1999), 11th Dist. No. 98-T-0084, 1999 Ohio App. LEXIS 3419.

{¶27} Furthermore, the court, by way of discussing the second factor, the wishes of the child, stated that “[t]he child is not old enough to express a preference regarding her living arrangement.” While it is true that Shilar was too young at the time of the hearing to express her wishes, the statute provides that the child’s wishes may be expressed through a guardian ad litem. Shilar’s guardian ad litem did express his estimation that it would be in Shilar’s best interest for Ruth’s parental rights to be

terminated and questioned appellant's ability to serve as the custodial parent. Failure to discuss Shilar's wishes, expressed through her guardian ad litem, was also prejudicial error. The court's failure to discuss these factors fully renders the court's judgment facially defective and warrants its reversal. Appellant's assignment of error has merit.

{¶28} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas, Juvenile Division, is reversed and remanded for further proceedings consistent with this opinion.

DONALD R. FORD, J.,

DIANE V. GRENDALL, J.,

concur.