[Cite as *In re K.R.*, 2015-Ohio-2819.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

IN THE MATTER OF: K.R.	:	**O P I N I O N**
	:	**CASE NO. 2015-T-0008**

Civil Appeal from the Trumbull County Court of Common Pleas, Domestic Relations Division, Case No. 2013 CH 43.

Judgment: Affirmed.

Susan Porter Collins, Trumbull County Children Services Board, 2282 Reeves Road, N.E., Warren, OH 44483 (For Plaintiff-Appellee).

Elise M. Burkey, Burkey, Burkey & Scher Co., L.P.A., 200 Chestnut Avenue, N.E., Warren, OH 44483-5805 (For Defendant-Appellant).

Terry A. Grenga, 3685 Stutz Drive, Suite 100, Canfield, OH 44406 (Guardian ad litem).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Monica Ravotti, appeals the January 23, 2015 judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, terminating her parental rights concerning her daughter K.R. and granting permanent custody to appellee, Trumbull County Children Services Board (hereafter "TCCSB"). We hold the trial court did not err in concluding that there was clear and convincing evidence to support its determination that appellant's parental rights should be terminated. Accordingly, we must affirm the judgment of the trial court.

{¶2} K.R., born June 1, 1998, has been in the temporary custody of TCCSB since August 19, 2013, when Juvenile Rule 6 emergency custody was invoked by the police department. The police department found K.R. outside of her mother's home unsupervised at approximately 4:00 a.m. In addition to K.R., two of her siblings were taken into custody. K.R.'s father is unknown.

{¶3} TCCSB implemented a case plan with the goal of reunification. Appellant met certain conditions of the plan; she, nevertheless, failed several drug tests and failed to retain and follow the parenting practices acquired from attending six planned sessions for parenting teens. Appellant also failed to seek psychological treatment and additional counseling per the case plan.

{¶4} The record reflects that shortly after being placed into the custody of TCCSB, K.R. was placed in a foster home and has become accustomed to her new environment. In an in-camera interview conducted on February 21, 2014 (and presented in court on March 14, 2014), K.R. requested her case plan be amended to reflect that she no longer wished to be reunified with her family. On July 30, 2014, TCCSB filed a motion for permanent custody.

{¶5} On October 16, 2014, the magistrate recommended that appellant's parental rights to K.R. be permanently terminated. The magistrate further recommended K.R. be placed in the permanent custody of TCCSB for the purpose of adoption and placement pursuant to R.C. 2151.414. On January 23, 2015, after an independent review of the record, the trial court adopted the magistrate's decision.

{¶6} Appellant filed a timely notice of appeal and, as her first assignment of error, alleges:

{¶7} "The trial court erred in permanently severing mother's rights even though she had substantially complied with her case plan, and there were reasonable alternatives other than permanent custody."

{¶8} We recognize that the termination of parental rights is "the family law equivalent of the death penalty." *In re Phillips*, 11th Dist. Ashtabula No. 2005-A-0020, 2005-Ohio-3774, ¶22, citing *In re Hoffman*, 97 Ohio St.3d 92, 95, 2002-Ohio-5368. This court has stated that a parent is entitled to "fundamentally fair procedures in accordance with the due process provisions under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution." *In re Sheffey*, 167 Ohio App.3d 141, 147, 2006-Ohio-619 (11th Dist.).

{¶9} R.C. 2151.414 provides the two-pronged analysis a trial court must follow in permanent custody proceedings. Pursuant to R.C. 2151.414(B)(1), a trial court may grant permanent custody if the court determines at the permanent custody hearing—by clear and convincing evidence—that it is in the best interest of the child to grant permanent custody to the agency and that any of the following apply:

> (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.
>
> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (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 or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

{¶10} "Clear and convincing evidence is more than a mere preponderance of evidence; instead, it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Aiken*, 11th Dist. Lake No. 2005-L-094, 2005-Ohio-6146, ¶28.

{¶11} In this case, at the time the complaint was filed, K.R. had not been in the temporary custody of TCCSB for at least 12 months of a consecutive 22-month period. As noted by the magistrate, "since the Motion for permanent custody was filed in July 2014, the measurement period for ORC 2151.414(B) purposes is from September 13, 2013, to July 31, 2014, a period of ten months." The magistrate then found, "for purposes of ORC 2151.414(B), [K.R.] is not abandoned by her mother or orphaned, and the relevant sections that apply to her case are ORC 2151.414(B)(1)(a) and ORC 2151.414(B)(2)."

{¶12} R.C. 2151.414(B)(2) states:

> With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that 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 determines in accordance with division (D) of this section that permanent custody is in the child's best interest.

{¶13} In finding that a child cannot or should not be placed with his or her parent(s) within a reasonable time, the trial court must review the factors under R.C. 2151.414(E)(1) through (16) and all relevant evidence. If the trial court finds one of the

factors present by clear and convincing evidence, the trial court must make a finding that the child cannot be placed with the parent(s).

{¶14} A review of the record and the trial court's judgment entry in this case indicates the trial court reviewed the appropriate factors and found that R.C. 2151.414(E)(1) applies. The trial court found that appellant failed to follow her case plan which required her to undergo counseling and follow such recommendations. Appellant, however, failed to complete counseling, and at the time of the hearing, a year had passed. Appellant stopped treatment at Community Solutions and continued to screen positive for marijuana. Additionally, appellant conceded that although she was offered after-class help, she declined it. Appellant also was living with the male that had allegedly inappropriately "touched" K.R. in the past. The trial court noted that K.R.'s father is unknown.

{¶15} The trial court was presented with clear and convincing evidence to support findings under R.C. 2151.414(E)(1). Therefore, the trial court did not err in finding that K.R. could not be placed with either parent within a reasonable time or should not be placed with either parent.

{¶16} Having determined that one of the four factors in R.C. 2151.414(B)(1)(a)-(d) apply, the trial court must next decide, by clear and convincing evidence, whether the award of permanent custody to an agency is in the child's best interest based upon a non-exclusive list of relevant factors set forth in R.C. 2151.414(D)(1):

> (a) 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;
>
> (b) 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;
>
> (c) 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;
>
> (d) 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;
>
> (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

In its judgment entry, the trial court examined the aforementioned "best interest" prong—R.C. 2151.414(D)(1).

{¶17} On appeal, appellant argues the trial court did not find by clear and convincing evidence that all statutory standards were met in terminating her parental rights to K.R. Appellant maintains the trial court should have granted legal custody to the foster parents instead of granting permanent custody to the TCCSB. We disagree.

{¶18} In its evaluation of R.C. 2151.414(D)(1), the trial court analyzed each of the relevant factors required in determining the best interest of the child. With respect to the interaction between K.R. and her family, it acknowledged that while K.R. loves her mother, grandmother, and siblings, K.R.'s relationship with her mother is often turbulent, and the relationship between K.R. and her mother's boyfriend was not appropriate. Further, K.R.'s foster family has already adopted her cousin, to which K.R. describes as a younger sister to her. K.R. stated that she sees how her cousin has

become affiliated with the family; K.R. feels safe with her foster family; and she desires to become a part of the foster family. K.R.'s behavior has also improved since being placed with the foster family, and she no longer uses illegal drugs.

{¶19} Addressing the other factors of R.C. 2151.414(D)(1), it was noted, in both the in-camera interview from February 2014 and during trial proceedings in October 2014, that K.R. wanted to remain with her foster family in spite of her grandmother being approved for home study, which would have allowed K.R. to remain with her immediate family. At trial, K.R. explained that, since being placed with TCCSB over a year ago, she feels safer and that she does not have to worry about drugs. She further stated that she does not worry about being around a potentially dangerous environment, to which she feels she could be subjected if she returned to her mother's or grandmother's homes. She demonstrated she understands the difference between legal custody and adoption and articulated her hope that her foster family will adopt her. The court found that none of the factors of R.C. 2151.414(E)(7) through (11) apply in this case.

{¶20} Upon review of the record, we conclude clear and convincing evidence established that it was in the best interest of K.R. to be placed in permanent custody with the TCCSB.

{¶21} Appellant's first assignment of error is without merit.

{¶22} Appellant's second assignment of error alleges:

{¶23} "The trial court erred in not appointing a guardian ad litem for the natural mother to assist in preparing a defense."

{¶24} Appellant contends that both R.C. 2151.281(C) and Juv.R. 4(B)(3) mandated the appointment of a guardian ad litem to protect her interests in this case.

{¶25} R.C. 2151.281(C) provides:

> In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent * * *, the court shall appoint a guardian ad litem to protect the interest of that parent.

{¶26} Juv.R. 4(B)(3) likewise provides:

> The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when * * * [t]he parent * * * appears to be mentally incompetent[.]

{¶27} A trial court's decision whether to appoint a guardian ad litem is reviewed under an abuse-of-discretion standard. *In re Sappington*, 123 Ohio App.3d 448, 454 (2d Dist.1997). The first inquiry in determining whether the trial court complied with R.C. 2151.281(C) and Juv.R. 4(B)(3) is whether the parent appeared "mentally incompetent" during the trial court proceedings. *In re K.P.,* 8th Dist. Cuyahoga No. 82709, 2004-Ohio-1674, *12; *In re Anderson,* 4th Dist. Athens No. 02CA38, 2002-Ohio-7405, ¶7; *In re King-Bolen*, 9th Dist. Medina Nos. 3196-M, 3231-M, 3200-M & 3201-M, 2001 Ohio App. LEXIS 4551 (Oct. 10, 2001).

{¶28} If the court on appeal finds that a guardian ad litem should have been appointed, the next inquiry is whether there was any prejudice by the failure to appoint a guardian ad litem. *K.P., supra*, at *13-14; *Anderson, supra* at ¶9.

{¶29} At the outset, we note that appellant failed to request the appointment of a guardian ad litem until the day of the hearing on the termination of parental rights motion. At the hearing, appellant moved for a continuance until the court appointed her a guardian ad litem. The motion was denied, and the hearing proceeded.

{¶30} On appeal, appellant contends she was entitled to have a guardian ad litem appointed to protect her interests because she "was not able to properly assist counsel" due to her mental health issues.

{¶31} Nothing in the record indicates the extent to which, if at all, appellant's mental health issues impeded her ability to understand and participate in these proceedings. Although appellant's case plan required her to obtain a current mental health assessment, she failed to do so. Moreover, the record in this case demonstrates that appellant appeared to understand the nature of these proceedings and even took affirmative steps to attempt to assist in her case.

{¶32} Additionally, "[e]ven where a parent's attorney was appointed solely as counsel and not specifically for the dual purpose of serving as guardian ad litem, the parent does not suffer prejudice if counsel safeguards the parent's rights and advocates for reunification in accordance with the parent's wishes." *In re M.T.*, 6th Dist. Lucas No. L-09-1197, 2009-Ohio-6674, ¶17. From the record, it is evident that appellant's counsel represented her vigorously throughout the proceedings and advocated that the trial court deny TCCSB permanent custody of K.R.

{¶33} Based on the record before us, the trial court did not abuse its discretion in failing to appoint a guardian ad litem for appellant. Appellant's second assignment of error is without merit.

{¶34} The judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, is hereby affirmed.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.