

[Cite as *In re I. S.*, 2009-Ohio-6945.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: I. S.

C.A. No. 24935

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 07-11-1082

DECISION AND JOURNAL ENTRY

Dated: December 31, 2009

BELFANCE, Judge.

{¶1} Mary Taylor (“Mother”) appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to one of her minor children and placed the child in the permanent custody of Summit County Children Services Board (“CSB”). For the reasons that follow, we affirm.

FACTS

{¶2} Mother is the natural mother of I.S., born September 13, 1998, as well as three other minor children who are not at issue in this appeal. The father of I.S. was involved in the proceedings in the trial court but is not a party to this appeal.

{¶3} On November 16, 2007, CSB filed complaints alleging that I.S. and his siblings were neglected and dependent children because they had been exposed to domestic violence between Mother and her then-husband, who is not I.S.’s father. CBS alleged that the husband

had been charged with domestic violence after he repeatedly struck Mother in the presence of the children. Mother moved out of the home with the children and obtained a civil protection order.

{¶4} Initially, the children were allowed to remain in Mother's custody under an order of protective supervision. Less than four months later, however, police removed the children from Mother's home pursuant to Juv.R. 6. CSB had contacted the police because Mother failed to answer the door and children could be heard inside the home. CSB was also concerned that the children had not attended school all week. After police were able to get Mother to open the door, they discovered that the home was filthy, there was no running water, and there was little food for the children to eat. Mother also had had a black eye, but could not explain how she had been injured, and she was not speaking coherently. Due to concerns about Mother's mental health, she was taken to a hospital psychiatric ward, where she received treatment for several days.

{¶5} While Mother was hospitalized, mental health professionals determined that she suffered from a serious mental illness that involved both psychotic and depressive symptoms. Mother was prescribed medication, which she began taking regularly. After a few days, Mother became less agitated and was able to communicate more rationally. Upon her release from the psychiatric ward, she was referred to Community Support Services for continued counseling. Although Mother attended counseling, she refused to recognize that she suffered from a serious mental illness that required ongoing counseling and medication.

{¶6} On March 23, 2009, CSB moved for permanent custody of I.S. The trial court held a hearing on CSB's motion as well as motions by Mother and Father for legal custody of I.S. and Mother's alternative request for a six-month extension of temporary custody. The trial court found that I.S. had been in the temporary custody of CSB for more than 12 of the prior 22

months and that permanent custody was in his best interest. Consequently, it terminated parental rights and placed I.S. in the permanent custody of CSB. Mother appeals and raises one assignment of error.

BEST INTERESTS OF THE CHILDREN

{¶7} Mother maintains that the trial court's permanent custody decision was not supported by the evidence presented at the hearing. Before a juvenile court can terminate parental rights and award to a proper moving agency permanent custody of a child, it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of the prior 22 months, or that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D). See R.C. 2151.414(B)(1) and 2151.414(B)(2); see, also, *In re William S.* (1996), 75 Ohio St.3d 95, 99.

{¶8} When evaluating whether a judgment is against the manifest weight of the evidence in a permanent custody case, this Court reviews the entire record and

“weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the [judgment].” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

Accordingly, before reversing a judgment as being against the manifest weight of the evidence in this context, the court must determine whether the trier of fact, in resolving evidentiary conflicts

and making credibility determinations, clearly lost its way and created a manifest miscarriage of justice. See *In re M.C.*, 9th Dist No. 24797, 2009-Ohio-5544, at ¶8 and ¶17.

{¶9} The trial court found that the first prong of the test was satisfied because I.S. had been in the temporary custody of CSB for more than 12 of the prior 22 months and Mother does not dispute that finding. She challenges only the trial court's decision on the best interest prong of the test.

{¶10} When determining whether a grant of permanent custody is in the children's best interests, the juvenile court must consider all the relevant factors, including those enumerated in R.C. 2151.414(D): the interaction and interrelationships of the children, the wishes of the children, the custodial history of the children, and the children's need for permanence in their lives. See *In re R.G.*, 9th Dist. Nos. 24834 and 24850, 2009-Ohio-6284, at ¶11.

{¶11} During the first eight months that I.S. lived outside the home, Mother's interaction with him was limited to weekly, supervised visitation because Mother had failed to make significant progress on the reunification goals of the case plan. Of particular concern to CSB and the trial court throughout this case was Mother's refusal to recognize that she had a serious mental illness that required ongoing treatment.

{¶12} Although CSB notes in its appellate brief that Mother's expressions of her religious beliefs served as evidence of her mental illness, it is clear from the record that the trial court did not consider the observations of lay witnesses about Mother's behavior, nor did it evaluate her religious beliefs. Instead, the trial court properly focused on the diagnoses of mental health professionals about Mother's mental health. The various mental health professionals who evaluated Mother reached different conclusions about whether she suffered from bipolar disorder with psychotic or schizophrenic features, schizophrenia, or some other

psychotic disorder. All of them agreed, however, that Mother was in need of continued counseling and medication to control her depression and psychotic symptoms.

{¶13} Throughout this case, Mother was reluctant to address her serious mental health problem. Although she attended counseling, she switched counselors numerous times, continually attempting to find a mental health professional who would opine that she did not have any serious mental illness. During November 2008, without informing CSB, Mother moved to Pennsylvania to live with her aunt. Mother discontinued all counseling services in Ohio and lost her medical benefits. On December 4, 2008, Mother was again admitted to a hospital psychiatric ward for several weeks. She apparently attended counseling after leaving the hospital but, because she refused to sign information releases, CSB was unable to monitor her progress. Mother left Pennsylvania a few months later because she and her aunt did not agree about how Mother should work on her case plan objectives.

{¶14} Mother continued to deny that she had any mental illness, despite the fact that she later applied for, and received, Social Security Disability because of her mental illness. Mother told one of her counselors that she was taking medication solely to get her children back. CSB was concerned that Mother would stop taking her medication if her children were returned to her care.

{¶15} Although Mother attended her supervised visits regularly in the beginning of the case, according to one of her caseworkers, I.S. did not interact with her but “did his own thing.” During the second eight months, Mother had only two visits with I.S. During November 2008, Mother moved to Pennsylvania to live with her aunt. She had only one visit with I.S. while she lived in Pennsylvania for six months. Mother had one visit with I.S. after she returned to Ohio.

Shortly afterward, I.S. was placed with the aunt in Pennsylvania and Mother had no more visits with him.

{¶16} I.S. had become bonded with his aunt and the aunt had expressed an interest in adopting him. The child told the guardian ad litem that he wanted to continue living with his aunt in Pennsylvania. The guardian ad litem also expressed her opinion that permanent custody was in the best interest of I.S. She emphasized that he was thriving in his placement with his aunt and that he wanted to remain there. The guardian further expressed concern about Mother's inability to take care of her own needs without assistance and her failure to accept that she had a mental illness that required her to take medication on an ongoing basis.

{¶17} At the time of the hearing, I.S. had been living in the temporary custody of CSB for nearly 16 months. Prior to that time, he had lived with his mother for approximately nine years, where he had been exposed to domestic violence and his mother's mental illness. The evidence further demonstrated that, over the years, I.S. had assumed the role of caregiver to his three younger siblings because Mother had neglected them.

{¶18} I.S. was in need of a legally secure permanent placement and neither of his parents was in a position to provide him with a suitable home at the time of the hearing. CSB had been unable to find any suitable relatives who were willing to take legal custody of him. Although the aunt in Pennsylvania was willing to adopt I.S., she was not willing to take legal custody of him, apparently due to her strained relationship with Mother. The trial court reasonably concluded that a legally secure permanent placement could only be achieved through a grant of permanent custody to CSB.

{¶19} Given the evidence before the trial court at the permanent custody hearing, this Court cannot say that it lost its way in concluding that permanent custody was in the best interest of I.S. Mother's assignment of error is overruled.

CONCLUSION

{¶20} Mother's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

CARR, P. J.
CONCURS

WHITMORE, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶21} Although I agree with the majority that the permanent custody decision was supported by the evidence presented at the hearing, I do not agree that the criminal manifest weight standard should be applied in permanent custody cases. As I stated at the conclusion of my concurring opinion in *In re M.H.*, 9th Dist. No. 09CA0028, 2009-Ohio-6911, at ¶36, “[i]n the absence of additional guidance, I would apply the civil manifest weight of the evidence standard to all juvenile appeals which do not involve the adjudication and disposition of a delinquent child.”

APPEARANCES:

SHUBHRA N. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.