

[Cite as *In re A. B.*, 2010-Ohio-5464.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: A. B.

C. A. No.     25460

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     DN 09-02-0068

DECISION AND JOURNAL ENTRY

Dated: November 10, 2010

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DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} This case involves the permanent custody of a minor. The juvenile court removed the child from her mother’s custody shortly after her premature birth. The mother had lost custody over the years of her five older children because of her long-standing addiction to cocaine. The issue the mother has raised on appeal is whether the evidence supported the trial court’s conclusion that permanent custody was in the child’s best interest. This Court affirms because the evidence before the trial court demonstrated that the mother could not provide a stable home for the child at the time of the permanent custody hearing or in the foreseeable future. She had recently completed a drug treatment program and achieved sobriety for a brief period, but was at risk of relapsing because she had not gained insight into how her behavior had led to relapses in the past. She continued to live with other drug users and was dependent upon

them for financial support, but did not believe that her continued interaction with other drug users posed a threat to her sobriety.

### BACKGROUND

{¶2} Amber McDaniel is the natural mother of A.B., who was born prematurely on January 24, 2009. A.B. remained hospitalized for several weeks because she weighed less than four pounds at birth and had contracted syphilis from the mother. Because A.B. required medical treatment and the hospital had been unable to locate the mother to obtain her consent to treat the child, the hospital contacted Summit County Children Services Board. Children Services filed a complaint, alleging that A.B. was neglected and dependent because of the mother's continuing drug abuse, prostitution, and other problems that had caused her to lose custody of her five older children. The trial court later adjudicated A.B. a neglected and dependent child.

{¶3} The mother admitted that she had struggled with an addiction to cocaine for nearly a decade. Two of her children were removed from her custody in February 2002 and later placed in the permanent custody of Children Services. Another child, K.M., was removed from the mother's custody shortly after her birth in November 2003. The mother eventually surrendered her parental rights to K.M. The mother's other two children are in the legal custody of their father, but the record does not include any details about when, how, or why the mother lost custody of them.

{¶4} During this case, the primary reunification objectives were for the mother to achieve and maintain sobriety and to obtain a mental health assessment and follow any recommendations. The mother continued to test positive for cocaine and complied only minimally with the counseling component of the case plan. Consequently, Children Services

moved for permanent custody of A.B. Following a hearing on the motion, the trial court found that A.B. could not be returned to the mother's home within a reasonable time or should not be returned to her and that permanent custody was in A.B.'s best interest. The mother has timely appealed from that judgment.

#### BEST INTEREST OF THE CHILD

{¶5} The mother's assignment of error is that the evidence presented at the permanent custody hearing did not support the trial court's decision. Before a juvenile court may 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 twelve months of the prior twenty-two 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 Section 2151.41.4(E) of the Ohio Revised Code; and (2) the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under Section 2151.41.4(D). See R.C. 2151.41.4(B)(1) and (2); see also *In re William S.*, 75 Ohio St. 3d 95, 99 (1996).

{¶6} The mother has not disputed the trial court's finding that the first prong of the permanent custody test was satisfied because A.B. could not be placed with her in a reasonable time or should not be placed with her based on several factors under Section 2151.41.4(E) of the Ohio Revised Code, including that the mother's parental rights to two of A.B.'s siblings had been involuntarily terminated in prior juvenile court proceedings. See R.C. 2151.41.4(E)(11). The mother has challenged only the trial court's finding on the best interest prong of the permanent custody test. When determining whether a grant of permanent custody is in the child's best interests, the juvenile court must consider all the relevant factors, including those

enumerated in Section 2151.41.4(D) of the Ohio Revised Code: the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, the child's need for permanence in her life, and whether any of the factors in Section 2151.41.4(E)(7) through (11) apply to the parent and the child. R.C. 2151.41.4(D).

{¶7} Several witnesses testified that the mother visited A.B. regularly, interacted appropriately with her, and that there appeared to be a bond between the two. The caseworker further explained, however, that the mother never had the opportunity to demonstrate her ability to care for A.B. other than during her two-hour visits at the visitation center. Children Services never permitted the mother to visit with A.B. away from the visitation center because she failed to make sufficient progress on the reunification goals of the case plan.

{¶8} The primary case plan goals for the mother focused on her need to obtain psychological and chemical dependency assessments and follow any treatment recommendations. The mother obtained chemical dependency and psychological assessments and was diagnosed with cocaine dependence and a personality disorder, not otherwise specified. The mother admitted to her counselor that she had used cocaine regularly for many years and that it had interfered with her ability to care for her children and maintain employment. She told the counselor that she had attempted drug treatment many times in the past, but had been unable to get sober. The recommendations of her assessments required the mother to complete an intensive outpatient drug treatment program, participate in weekly counseling, and submit regular urine samples for drug screening.

{¶9} The mother continued to test positive for cocaine for nearly a year after A.B. was born. She started drug treatment in April 2009 but was terminated from the program because she did not attend regularly. During December 2009, the mother entered another outpatient drug

treatment program that she eventually completed. Her participation in that program had been ordered by another court in connection with a misdemeanor conviction for possession of drug paraphernalia. The mother continued to test positive for cocaine during the treatment program. By the time she completed the 150-day outpatient program in January 2010, however, she was no longer testing positive. She participated in an aftercare program for another two months and continued to demonstrate sobriety. By the time of the hearing, the mother had submitted negative drug screens for approximately four months. Children Services continued to have concerns about her ability to remain sober on a long-term basis. Given the mother's "extensive history of substance abuse," the caseworker testified that Children Services would not consider placing the child with the mother until she had remained sober after treatment for at least six to eight months.

{¶10} Witnesses also expressed concern that the mother's compliance with the counseling component of the case plan had been "minimal." Because she had failed to receive adequate counseling, she had not gained insight into her need to modify her past behavior to prevent a relapse. The mother continued to surround herself with others who had drug problems, but she did not believe that her continued association with drug users posed a threat to her continued sobriety. She had no source of income and was financially dependent on her boyfriend and a female roommate, both of whom struggled with drug addiction and associated criminal problems. Although the mother testified that she planned to secure her own housing when her lease expired in two months, she had not taken any steps to do so.

{¶11} Because A.B. was only sixteen months old at the time of the permanent custody hearing, she was too young to express her own wishes. The guardian ad litem expressed her opinion that permanent custody was in A.B.'s best interest. The guardian emphasized the

mother's long-term drug problem and her concern that, although the mother had been sober for a brief period, she lacked the judgment and coping skills that she needed to remain sober on a long-term basis. The guardian also expressed concern that the mother was unemployed, lacked stable housing, and continued to exercise poor judgment in choosing friends.

{¶12} A.B. had spent her entire sixteen-month life outside of the mother's custody. She remained in the hospital after her birth and was placed in the temporary custody of Children Services before she was three weeks old. She has lived in the home of the same foster family since that time. She had become bonded with the foster parents, as well as their son and daughter, who is A.B.'s older sibling, K.M. The foster parents expressed an interest in adopting A.B. if the trial court granted Children Services' motion for permanent custody.

{¶13} There was also evidence that A.B. was in need of a legally secure permanent placement and that such a placement could not be achieved without a grant of permanent custody to Children Services. Children Services had been unable to find any suitable relatives who were able to take custody of A.B., and the mother has not disputed that she was not able to provide a suitable home for A.B. at the time of the hearing. Instead, she has argued that, because there was still another year until the two-year sunset date in this case, the trial court could have granted a six-month extension of temporary custody as a less drastic alternative to permanent custody. She has not assigned as error the trial court's denial of her motion for an extension of temporary custody.

{¶14} Although the trial court was not precluded from granting an extension of temporary custody by a time constraint, the trial court was authorized to grant a six-month extension of temporary custody only if it found, based on clear and convincing evidence, that the extension was in the best interest of the child, that there had been "significant progress" on the

case plan, and that there was “reasonable cause to believe that the child [would] be reunified with one of the parents or otherwise permanently placed within the period of extension.” R.C. 2151.41.5(D)(1). As this Court has detailed already, the trial court did not have clear and convincing evidence before it to demonstrate that the mother had made significant progress on the case plan or that A.B. could be reunited with her within the next six months.

{¶15} Finally, the trial court was required to consider that the factor set forth in Section 2151.41.4(E)(11) applied to this case because the mother’s parental rights to two siblings of A.B. were involuntarily terminated on March 19, 2003. R.C. 2151.41.4(D). During the seven years since then, the mother continued to struggle with an addiction to cocaine and had made no progress toward achieving sobriety. She gave birth to K.M. in November 2003 and eventually voluntarily surrendered custody of her. After A.B. was born and removed from her custody, she continued using cocaine for almost another year. Although she was faced with losing the custody of her sixth child, she did not make a serious effort to enter treatment and become sober until nearly one year later, after she had been ordered to do so in connection with criminal drug charges.

{¶16} There was ample evidence before the trial court to support its conclusion that permanent custody was in A.B.’s best interest. The mother’s assignment of error is overruled.

#### CONCLUSION

{¶17} The mother’s assignment of error is overruled. The judgment of the Summit County Common Pleas Court, Juvenile Division, is affirmed.

Judgment affirmed.

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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.

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CLAIR E. DICKINSON  
FOR THE COURT

WHITMORE, J.  
BELFANCE, J.  
CONCUR

APPEARANCES:

HOLLY KEHRES FARAH, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN R. DIMARTINO, assistant prosecuting attorney, for appellee.

JOSEPH KERNAN, attorney at law, for CASA/GAL.