[Cite as *In re F.M.*, 2010-Ohio-5998.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: F. M.	C. A. No. 25464
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DN 08-11-942

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

MOORE, Judge.

{¶1} Appellant, Ashley H., appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her child, F.M., and placed the child in the permanent custody of Summit County Children Services Board ("CSB"). This Court affirms.

I.

{¶2} On November 19, 2008, sixteen-year-old Ashley H. ("Mother") gave birth to F.M. At the time of the birth of her child, Mother was serving a one-year sentence in the Department of Youth Services ("DYS"), having previously been found delinquent by reason of felonious assault. Mother was unable to care for the child, and the father of the child, Aaron M. ("Father"), was serving a six-month sentence for receiving stolen property. CSB did not believe the maternal grandparents presented a viable option for placement either. The caseworker later explained that the maternal grandparents had a long history with CSB that included unsafe living

conditions, insufficient food in the home, inappropriate supervision of children, and non-functioning utilities, as well as having a criminal history that included domestic violence, assault, and drugs. As a result, CSB sought custody of F.M. through the juvenile court based on a claim of dependency. The trial court granted emergency temporary custody of the child to CSB, and the agency placed her with a foster family.

{¶3} In due course, the trial court adjudicated F.M. to be a dependent child and placed her in the temporary custody of the agency. The case plan provided for weekly visits and required Mother to obtain a psychological evaluation and follow all recommendations; be able to provide for F.M.'s needs; obey all laws and follow all requirements of probation; attend parenting classes and demonstrate that she is able to function as a parent; and complete anger management classes.

{¶4} CSB also prepared case plan objectives for relatives that were potential custodians. Father was offered visitation and was asked to take parenting classes and complete a psychological evaluation. Except for attending some visits, he failed to make any effort to comply with his case plan and essentially withdrew from involvement in these proceedings. The paternal grandparents initially expressed an interest in obtaining custody. A placement with them was, in fact, approved by the agency, but they ultimately withdrew from consideration after learning that the agency would not consider them as custodians if their son, the father of the child, were living in the same home.

{¶5} The agency asked the maternal grandparents to attend anger management classes, parenting classes, individual counseling, and family therapy to address a long history of family conflict. The maternal grandparents were initially reluctant to engage in services, but eventually completed some of the offered programs. Nevertheless, they did not satisfactorily address their

existing problems. Although they completed anger management classes, the maternal grandparents continued to display verbal and physical aggression towards one another. The maternal grandmother was charged with disorderly conduct against one of her adult children during the pendency of this case. Mother's older brother was on house arrest for involvement in a violent incident, and her two younger brothers had delinquency charges against them. The younger brothers were being expelled for bringing a gun to school. Accordingly, the maternal grandparents were eventually removed from consideration for placement of F.M.

{¶6} Mother was released from DYS in July 2009, and DYS arranged for her to have her own efficiency apartment in Canton, Ohio. Within three months, however, Mother decided to move back with her parents, despite knowing that the caseworker continued to believe that her parents' home was not an appropriate environment for her or for her child.

{¶7} In October 2009, CSB requested a six-month extension of temporary custody, and the trial court granted the motion. At the same time, the caseworker expressed some concerns with Mother's progress on her case plan. She specifically noted that since Mother was released from DYS, she had not been consistent in attending counseling, had revealed some parenting deficiencies during visitation, and had not yet obtained employment. Because of the caseworker's continuing concerns with Mother's parenting skills, CSB asked Mother to take another parenting class that focused on the needs of teenaged parents. At first, Mother resisted attending the class, asserting that she had attended parenting classes at DYS. Eventually, however, she began the classes and found them beneficial, but she only attended one or two sessions. Mother was unable to continue the classes because she was arrested on misdemeanor assault and criminal damage charges on February 23, 2010. She spent the next six weeks in jail.

{¶8} On January 27, 2010, CSB moved for permanent custody of F.M. because Mother's progress on her case plan was minimal and Mother had not demonstrated that she benefitted from the classes she had attended. For her part, Mother sought another six-month extension of temporary custody. Following a hearing on both motions, the trial court granted CSB's motion for permanent custody and denied Mother's motion for an extension of temporary custody. The court found that F.M. had been in temporary custody for more than 12 of 22 consecutive months and that permanent custody was in the child's best interest. Mother appeals and assigns one error for review.

II.

ASSIGNMENT OF ERROR

> "The trial court erred in failing to grant a six month extension of temporary custody, and finding that it was in the child's best interest to place the child in the Permanent Custody of Children Services Board, as the decision was against the manifest weight of the evidence."

{¶9} Mother argues that the trial court incorrectly found that permanent custody was in the best interest of the child and that the court should have granted a six-month extension of temporary custody instead. Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency 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 a consecutive 22-month period, 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) that 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.

{¶10} The trial court found that the first prong of the permanent custody test was satisfied because F.M. had been in the temporary custody of CSB for at least 12 of 22 consecutive months. Mother does not contest that finding, but rather challenges the finding that permanent custody is in the best interest of the child and asserts that the trial court should have granted her another extension of temporary custody instead.

{¶11} When determining whether a grant of permanent custody is in a child's best interest, 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 child, the custodial history of the child, and the child's need for permanence in his life. See *In re R.G.*, 9th Dist. Nos. 24834 & 24850, 2009-Ohio-6284, at ¶11. "Although the trial court is not precluded from considering other relevant factors, the statute explicitly requires the court to consider all of the enumerated factors." *In re Smith* (Jan. 2, 2002), 9th Dist. No. 20711. See, also *In re Palladino*, 11th Dist. No. 2002-G-2445, 2002-Ohio-5606, at ¶24.

{¶12} 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.

{¶13} The record indicates that Mother visited regularly with her child when she was able to do so. Initially, the child was brought to her for visits at DYS on a weekly basis. Upon her release from DYS, Mother attended two two-hour sessions weekly at the CSB Visitation Center, except for the six weeks of her subsequent incarceration. The visits were all supervised.

{¶14} The guardian ad litem testified that the bond F.M. shared with Mother was more like a connection to a babysitter than to a parent, in that she just played with her. Father's contact with F.M. has been minimal and he accomplished very little on his case plan. He did not attend the hearing. According to the guardian ad litem, he and Mother have broken up, and he has "checked out of the process."

{¶15} On the other hand, F.M. was said to be doing very well in her foster home and was bonded to the foster parents. The guardian ad litem testified that the child goes to her foster parents for comfort. She also enjoys interacting with the other children in that home.

{¶16} In the course of arguing that the trial court should have granted her a six-month extension, Mother contends that she substantially complied with her case plan. The record, however, fails to support that claim. Rather, it demonstrates that Mother made little progress on her reunification goals after she left DYS. Mother attended parenting classes, anger management classes, counseling sessions, and drug abuse programs while in DYS, but she participated in few case planning services in the ten months after she was released. Additionally, according to the caseworker, Mother has failed to demonstrate that she has benefitted from the classes that she has taken. The caseworker expressed some frustration with Mother's failure to make any plans for the future care of her baby.

{¶17} Mother's visits with F.M. never progressed beyond one or two hours in duration and supervised status. The caseworker testified that these limited visits were generally

satisfactory, but she had little confidence in Mother's ability to care for F.M. on an extended and unsupervised basis. The caseworker stated that Mother had not demonstrated that she benefitted from the parenting classes she took at DYS. She explained that Mother became frustrated and overwhelmed when the baby would fuss and cry. Also, she was awkward with the baby at times and often did not know how to respond to her. When the caseworker recommended that Mother take additional parenting classes specifically designed for teen parents, Mother was reluctant to do so. Eventually, Mother attended one or two of those classes, but her progress was interrupted by her six-week incarceration. Therefore, Mother made little progress on parenting skills.

{¶18} Mother complains that her progress was impaired because her first parole officer failed to make a proper referral for a psychological evaluation. Such a referral was made by Mother's new parole officer when she took over in January 2010. In addition, the CSB caseworker testified that she repeatedly emphasized to Mother that she needed to obtain a psychological evaluation upon her release from DYS in July 2009 or to provide a copy of one that she might have taken while in DYS. The caseworker specifically testified that she made referrals for such an evaluation for Mother and gave her several options of places where she could obtain it.

{¶19} Mother attended only two counseling sessions while she was still on probation. The caseworker expressed concern with Mother's mental health based on Mother's interactions with her and others, the anger she displayed, and the fact that the DYS records showed that she had been cutting herself and was on medication. Mother "vehemently" denied that she needed any type of counseling because she had participated in counseling while she was in DYS. She also claimed that she already had some type of assessment and was not going to get another. The caseworker testified that Mother's anger and cutting were only minimally addressed while she

was in DYS and there was no follow-up after she left. The caseworker testified that payment and transportation were not issues because Mother was covered by Medicaid and transportation was provided for her. Mother kept only one appointment towards completing her psychological evaluation and never finished it.

{¶20} Mother also complains that CSB made a referral for a substance abuse assessment "just days" before the permanent custody hearing, which took place on May 11, 2010. The record does not support this claim, however. A referral for a substance abuse assessment was made in January 2010, four months before the permanent custody hearing. Mother completed the assessment on February 9, 2010 and, on that day, she tested positive for marijuana. Mother was referred to the Community Health Center, and Mother scheduled an intake appointment, but did not keep the appointment because she was arrested and incarcerated on misdemeanor assault charges in the meantime. Mother tested positive for marijuana again on February 24, 2010, when she came to court on her criminal charges. Thus, Mother had more than a few days notice of the need to address substance abuse, and her failure to comply with treatment was not the fault of CSB.

{¶21} Mother's failure to complete her case plan objectives or benefit from them was persistent. Mother had the opportunity to attend Life Skills classes while she was living in Canton, but frequently claimed to have overslept for her 1:00 classes. She participated in an anger management course while she was in DYS, but was subsequently arrested for a misdemeanor assault charge and served another six weeks in jail as an adult. Although Mother participated in a drug abuse program in DYS, she later tested positive for marijuana. Since her release from DYS, Mother attended only two counseling sessions. Finally, Mother has not

obtained employment, except for a part-time babysitting job for a friend that started one month before the hearing.

{¶22} Mother has argued that CSB failed to allow her sufficient time to complete the services offered to her. During the eighteen months of this proceeding, Mother was confined at DYS or was in jail for nearly half of that time, a situation that was not the fault of CSB. Even when she had the opportunity, Mother failed to take full advantage of any number of services that were offered to her. Jill Ames, the second parole officer to work with Mother, testified that Mother would make excuses for missing appointments and kept promising to accomplish things in the future. According to the CSB caseworker, Mother "literally did nothing" on her case plan from the day she turned 18 until she was incarcerated again.

{¶23} Mother has also argued that she should have had more time to obtain independent housing after she turned 18 on December 13, 2009. The caseworker encouraged Mother to begin the process of applying for subsidized housing before her birthday so that she could obtain independent housing promptly at that time. She provided Mother with the applications in advance, and even talked to the manager of some of the units in order to expedite the process for Mother. Nevertheless, Mother failed to complete the applications and offered no explanation for her decision. Instead, she chose to return to her parents' home, knowing that home had been deemed inappropriate for a child. Based on this record, Mother's argument that she was not given enough time to secure independent housing after turning 18 is not compelling. Furthermore, Mother's claim that she would complete her case plan within an additional six months is mere conjecture, and, there is no evidence to support a conclusion that Mother would be any more prepared to take care of her child in six months than she is now.

{¶24} Mother testified at the hearing. Her position was that she was not ready to act on her case plan or care for her child earlier, but that she is now. She also stated that she planned to stay in her parents' home with F.M. and that she trusts her family members to help care for her child. She explained that she had been somewhat overwhelmed by the many obligations she faced, but nevertheless asserted that she was ready to take custody of her child.

{¶25} The wishes of the child may be expressed either by the child or by the guardian ad litem, with due regard for the maturity of the child. See R.C. 2151.414(D)(1)(b). See, also, *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, at ¶55. In this case, the guardian ad litem testified that it would be in the best interest of F.M. to be placed in the permanent custody of CSB.

{¶26} To this point, Mother states that it can be assumed that all children desire to know and be raised by their parents. This assumption correlates with the recognition that parents have a fundamental liberty interest in the care, custody, and management of their children. See *Santosky v. Kramer* (1982), 455 U.S. 745, 753. The assumption, however, much like the fundamental interest of parents in the custody of a child, may be overcome and permanent custody may be "nevertheless expressly sanctioned *** when it is necessary for the 'welfare' of the child." *In re Cunningham* (1979), 59 Ohio St.2d 100, 105. At eighteen months of age, F.M. is too young to express her own sentiments. This Court, therefore, considers the expression of the child's wishes as conveyed by the guardian ad item in assessing the trial court's determination of the child's best interest.

{¶27} The guardian ad litem expressed concern that although Mother engaged in some services at DYS, she had done little since her release and, furthermore, has not demonstrated what she was to have learned in those classes. He points to Mother's arrest and conviction on new assault charges and Mother's frustration with F.M. as examples of failure to benefit from

services such as anger management and parenting classes. The guardian ad litem also noted that Mother failed to sign releases so that he could verify Mother's compliance with post-DYS services. He repeatedly asked Mother about her case plan progress, and Mother only responded by saying that she was working on it, but failed to provide any proof of progress. The guardian ad litem testified that Mother is not ready to be a parent. He believes that a six-month extension would not be in F.M.'s best interest.

{¶28} The child has never been in the custody of Mother. She has been with the same foster parents since her removal from the hospital. Mother has generally visited with the child on a weekly or bi-weekly basis. The visits were supervised at both the DYS facility and the CSB Visitation Center.

{¶29} There was evidence before the trial court that the child was in need of a legally secure placement and that there were no suitable friends or relatives willing to provide for her care. The caseworker testified that the maternal grandparents could not provide an appropriate placement for F.M. The paternal grandparents withdrew from consideration as a placement for F.M. No relative filed a motion seeking legal custody.

{¶30} Upon consideration, this Court concludes that the trial court did not clearly lose its way and create a manifest miscarriage of justice when it found that permanent custody was in F.M.'s best interest. Because this Court has determined that permanent custody to CSB was in the best interest of F.M., it would be inconsistent to conclude that an extension of temporary custody would also be in her best interest. See *In re R.H.*, 9th Dist. No. 24537, 2009-Ohio-1868, at ¶15. The trial court did not err in denying Mother's motion for a six-month extension of temporary custody, in granting CSB's motion to terminate the parents' parental rights, and in placing F.M. in the permanent custody of CSB. Mother's assignment of error is overruled.

III.

{¶31} 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.

CARLA MOORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

EMILY M. HETE, Attorney at Law, for Appellant.

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