[Cite as *In re W.G.*, 2010-Ohio-6055.]

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

IN RE: W. G. and A. G.	C.A. Nos. 10CA0069-M 10CA0076-M
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE Nos. 2008 06 AB 0016 2008 06 DE 0017

DECISION AND JOURNAL ENTRY

Dated: December 13, 2010

WHITMORE, Judge.

{¶1} Appellants, Laura G. ("Mother") and Kenneth G. ("Father"), separately appeal from a judgment of the Medina County Court of Common Pleas, Juvenile Division, that terminated their parental rights to their two minor children. This Court affirms.

I

{¶2} Mother and Father are the natural parents of W.G., born May 7, 2008, and A.G., born September 26, 2006. W.G. was born a healthy baby boy and was released from the hospital two days after his birth. The family pediatrician examined W.G. while he was still in the hospital and, although he told the parents to schedule a follow-up examination within the next two weeks, the parents did not bring W.G. to the pediatrician's office until he was approximately one month old. The pediatrician diagnosed W.G. with impetigo and prescribed an antibiotic because he had a rash around his mouth, as well as a rash, crustiness, and swelling around his

scrotum. The pediatrician noted that he had never seen impetigo around the scrotum of an infant before.

{¶3} On June 7, 2008, Mother first noticed that W.G.'s left foot was swollen and he seemed to be in pain when Mother moved his left leg. The family attended a wedding the next day, where several guests commented about W.G.'s swollen foot. Earlier that day, Father had used a sewing needle to prick a blister on the bottom of W.G.'s left foot, in an apparent attempt to relieve the pressure in his foot. The needle prick did not reduce the swelling and, in fact, left a puncture wound in the child's foot. A nurse who attended the wedding thought that the swelling might have been caused by an insect bite, given the red mark in the center of W.G.'s foot. She told Mother to take W.G. to see his pediatrician.

{¶4} During the next several days, the parents did not take W.G. to his pediatrician, nor did they seek medical treatment for him elsewhere, even though the condition of his foot and leg continued to worsen. Mother later admitted that she knew W.G. was in pain for many days. Rather than getting the child medical treatment, however, she tried to avoid moving his leg to minimize his pain.

{¶5} On Friday, June 13, nearly a week after W.G.'s symptoms began, Mother called the office of the pediatrician, who was able to schedule an appointment for W.G. that same day. Father later called and cancelled the appointment, explaining that they were taking the child to a specialist instead. Mother indicated later that Father wanted to be present at the appointment and was unable to attend that day.

{¶6} It was not until the following Tuesday, June 17, that the parents finally took W.G. to see a podiatrist who had been referred to them by the paternal grandfather, who is also a podiatrist. Although the podiatrist had offered to see W.G. several days earlier, the parents

apparently were not able to adjust their schedules. After examining W.G.'s left foot and leg, the podiatrist told the parents to get him to a hospital immediately. W.G.'s foot was so severely swollen that the podiatrist feared he could lose his foot or even die.

{¶7} The parents took W.G., then 41 days old, to Akron Children's Hospital, where he was admitted due to the extent of his injuries. In addition to W.G. exhibiting extensive swelling on the bottom of his left foot, and being in obvious pain when either of his legs was moved, a physical examination revealed an extensive laceration at the base of his scrotum and a small hematoma on his left scalp. One of the doctors who examined W.G. explained that, in his more than thirty-year experience at Akron Children's Hospital, he had never seen such an extensive scrotal injury in a child that young.

{¶8} Further examination revealed that W.G.'s injuries were far more extensive than doctors were able to discern from his outward appearance. X-rays showed that W.G. had sustained 28 bone fractures that were at different stages of healing. He had fractures in both of his feet, legs, and arms, several ribs, all fingers in his right hand, both sides of his clavicle, and his skull. The doctors concluded that W.G. had been "the victim of multiple events of abusive trauma" that had occurred "over the course of many weeks."

{¶9} Although Mother recounted one incident in which W.G. had hit his head on a dresser when Father tripped while carrying him, which could have explained the skull fracture, the parents offered no explanation for any of W.G.'s other injuries. Because the hospital contacted Medina County Job and Family Services ("MCJFS") about its concerns, a caseworker came to the hospital to speak to the parents. Mother insisted that they had done nothing to harm W.G. and Father refused to speak to the caseworker.

{¶10} Due to concerns that both children were at risk of abuse, W.G. and A.G. were removed from their parents' custody pursuant to Juv.R. 6. MCJFS filed complaints the next day, alleging that W.G. was an abused child and that A.G. was a dependent child due to the abuse of her sibling in her home. On July 16, 2008, Father was indicted on multiple counts of felonious assault and felony child endangering for the injuries he allegedly inflicted upon W.G. Consequently, upon motion of MCJFS, the juvenile court issued a no contact order that prohibited Father from having any contact with either child. Mother was later indicted on multiple counts of child endangering.

{¶11} Until the matter was adjudicated, the parents refused to work with MCJFS on the reunification goals of the case plan. The adjudicatory hearing was postponed for several months to allow the parents time to prepare their defense. The parents attempted to establish that W.G.'s injuries had resulted from a bone fragility disorder or a vitamin deficiency, rather than abuse. After extensive discovery, the matter proceeded to a ten-day adjudicatory hearing.

{¶12} Several doctors who had examined W.G. testified at the adjudicatory hearing. Due to the extensive nature of W.G.'s injuries, the hospital had done genetic testing to rule out a bone fragility disorder. One doctor explained that some of the types of fractures W.G. sustained had a "high specificity" for abusive trauma. Moreover, unlike an older child who could have sustained some of the other types of injuries by climbing and falling or otherwise accidentally injuring himself, W.G. was too young to move on his own. Because the parents insisted that they had not caused any of W.G.'s injuries except possibly the skull fracture, and they failed to give any plausible explanation for how W.G. sustained such extensive injuries, the doctors concluded that someone had abused him.

{¶13} Although the parents presented expert testimony that the types of bone fractures sustained by W.G. could have resulted from a vitamin deficiency, none of those doctors had actually examined W.G. One of the doctors who examined W.G. testified that the child had no symptoms of a vitamin deficiency and, because W.G. drank vitamin-fortified formula and was growing at a normal rate, he did not believe that the child suffered from a vitamin deficiency. W.G.'s pediatrician further testified that, during the several months since W.G. was removed from his parents' custody, he had been thriving and had experienced no further problems with bone fractures, bruising, or swelling.

{¶14} Given the evidence presented at the adjudicatory hearing, the trial court concluded that W.G. had been the victim of abuse. The trial judge also emphasized that the parents had failed to provide a safe environment by failing to protect W.G. and/or promptly seek medical attention for him. He adjudicated W.G. an abused child and A.G. a dependent child. Mother was later tried for and convicted of child endangering for her role in failing to protect W.G. from the abuse. Father still awaited trial on the charges against him.

{¶15} MCJFS eventually moved for permanent custody of both children. Following a hearing on the motion, the trial court found that W.G. and A.G. had been in the temporary custody of MCJFS for more than twelve of twenty-two months prior to the filing of the motion and that permanent custody was in their best interests. Mother and Father separately appealed and this Court later consolidated their appeals. Mother raises two assignments of error and Father raises one.

II

Mother's and Father's Assignment of Error Number One

"THE TRIAL COURT'S GRANT OF PERMANENT CUSTODY TO [MCJFS] WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE

AGENCY FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT SUCH A JUDGMENT WAS IN THE BEST INTEREST OF THE CHILDREN."

{¶16} Although Mother and Father filed separate briefs, because Father's sole assignment of error is identical to Mother's first assignment of error, this Court will address them together. They argue that the evidence does not support the trial court's conclusion that permanent custody is in the best interests of the children. We disagree.

{¶17} 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 children are abandoned, orphaned, have been in the temporary custody of the agency for at least twelve months of the prior twenty-two months, or that the children 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 children, based on an analysis under R.C. 2151.414(D). See R.C. 2151.414(B)(1) and (2); see, also, *In re William S.* (1996), 75 Ohio St.3d 95, 99.

{¶18} The parents have not disputed the trial court's finding that the first prong of the permanent custody test was satisfied because W.G. and A.G. had been in the temporary custody of MCJFS for more than twelve of twenty-two months at the time the motion for permanent custody was filed. See R.C. 2151.414(B)(1)(d). Mother and Father challenge 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 R.C. 2151.414(D): 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 2151.414(E)(7) through (11) apply to the parent and the child. R.C. 2151.414(D).

{¶19} Rather than focusing on the evidence of what is best for their children, the parents continue to focus on themselves and maintain that they did not commit crimes against their child. To the extent that Father also argues that the trial court violated his Fifth Amendment right against self-incrimination, the record reveals that Father was never required to testify in this case, nor was he required to admit that he had harmed W.G.

{¶20} The parents overlook the fact that, whether it was one of them or someone else who harmed W.G., W.G. sustained multiple traumatic injuries on several occasions and neither of them did anything to protect him. Moreover, after W.G. exhibited symptoms that something was seriously wrong with his left foot and leg, whether at that time they should have suspected abuse, accidental injury, infection, and/or illness, both parents allowed their helpless infant to suffer in pain without receiving any medical attention for ten days. Since receiving medical treatment and living outside his parents' custody, W.G. has been a healthy child and has suffered no further significant injuries.

{¶21} The trial court considered the following evidence on each of the best interest factors. Because Father was subject to a no contact order, he had no contact with his children for most of the duration of this case. Although Mother focuses on evidence that her visits with her children were appropriate and that the caseworker had no concerns about her interaction with her children during visits, she had not visited with her children since her conviction in November 2009. Therefore, at the time of the permanent custody hearing, Father had not seen the children for almost two years and Mother had not seen them for six months.

{¶22} The children had been placed in the home of Mother's cousin, were doing well there, and had become bonded with the entire family. The cousin and her husband expressed interest in adopting W.G. and A.G. if the trial court granted the motion for permanent custody.

{¶23} Because the children were both less than four years old at the time of the hearing, they were too young to express their own wishes and the guardian ad litem spoke on their behalf. She opined that permanent custody was in their best interests.

{¶24} At the time of the permanent custody hearing, the children had lived for nearly two years outside the custody of their parents. For W.G., this time period represented almost his entire life. A.G. had spent almost half of her life away from her parents.

{¶25} Prior to that time, the children were in their parents' custody, where W.G. was exposed to repeated acts of abuse during the first 41 days of his life and suffered in pain because of that abuse. Although Mother insisted that she knew nothing about the abuse, she ignored obvious signs that something was wrong with W.G. and allowed him to suffer in pain before she got him the medical attention that he needed. There were further suggestions that the children were exposed to violence between the parents, as A.G. told her counselor that her daddy hurt her mommy's nose. Mother also admitted that there had been violence in her relationship with Father, but insisted that it all stopped after A.G. was born.

{¶26} There was evidence before the trial court that these young children, who had lived in three different homes during their short lives, were in need of a legally secure permanent placement and that permanency would only be achieved by placing them in the permanent custody of MCJFS. The children were eventually placed in the home of Mother's cousin, who was interested in adopting both children. Due to all of the moves, A.G. was experiencing more anxiety than a typical three-year-old. Her counselor testified that A.G. was doing well in her

current placement and that further relocations should be minimized to avoid increasing her anxiety.

{¶27} The parents do not dispute that they are both incarcerated and, aside from any issues of their fitness to parent their children, they were not able to take custody of them at the time of the hearing or in the foreseeable future. In fact, Mother testified at the hearing that she wanted her children to stay with her cousin. Although she would prefer that her cousin agree to take legal custody of the children, she understood that the cousin may not want that arrangement. The cousin testified that she did not want legal custody of the children but would prefer to adopt them.

{¶28} The trial court was also required to consider that Mother had been convicted of child endangering under R.C. 2919.22(A) for violating her duty of care to W.G. At the time of the hearing, however, she continued to insist that she did not abuse W.G. and no one else did either. See R.C. 2151.414(D) and (E)(5).

{¶29} There was ample evidence before the trial court to support its conclusion that permanent custody was in the best interests of both children. Father's sole assignment of error and Mother's first assignment of error are overruled.

Mother's Assignment of Error Number Two

> "THE TRIAL COURT FAILED TO COMPLY WITH THE MANDATE OF THE REVISED CODE BY NOT HOLDING THE PERMANENT CUSTODY HEARING WITHIN ONE HUNDRED TWENTY (120) DAYS OF THE FILING OF THE MOTION FOR PERMANENT CUSTODY."

{¶30} Mother argues that the trial court committed reversible error by failing to hold the permanent custody hearing within 120 days after MCJFS filed its motion. We disagree.

{¶31} R.C. 2151.414(A)(2) provides that the trial court shall hold the permanent custody hearing:

> "Not later than one hundred twenty days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the one-hundred-twenty-day deadline." (Emphasis added.)

{¶32} MCJFS filed its motion for permanent custody of both children on December 14, 2009. The trial court initially scheduled the hearing to begin on March 29, 2010, 105 days after the motion was filed. On March 15, 2010, two weeks before the scheduled hearing, Father's attorney filed a motion to withdraw, indicating that his physical or mental condition materially impaired his ability to represent Father. The trial court later allowed Father's counsel to withdraw and appointed new counsel for Father, who requested that the trial court continue the hearing on the motion for permanent custody to allow him time to prepare a defense. The trial court continued the hearing until May 24, 2010, which was outside the 120 days provided by R.C. 2151.414(A)(2).

{¶33} Mother has failed to demonstrate that the trial court erred by concluding that Father obtaining new counsel two weeks before the scheduled hearing was good cause to continue the hearing. Moreover, the trial court's journal entry indicates that, although counsel for MCJFS was opposed to continuing the hearing, "[c]ounsel for Mother joined in the motion to continue the case." Mother's second assignment of error is overruled.

III

{¶34} The parents' assignments of error are overruled. The judgment of the Medina 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 Medina, 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.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

CONRAD G. OLSON, Attorney at Law, for Appellant.

RICHARD BARBERA, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and CONNIE GENT HENDRICKS, Attorney at Law, for Appellee.

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