[Cite as *In re I.T.*, 2009-Ohio-3210.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

In the Matter of: I. T.

Court of Appeals No. S-09-001

Trial Court No. 20630119

DECISION AND JUDGMENT

Decided: June 25, 2009

* * * * *

Jonathan G. Stotzer, for appellant.

Cindy A. Bilby, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas, Juvenile Division, that terminated the parental rights of I.T., Sr. ("Tony")[1], and appellant J.G., the natural parents of I.T., Jr., and granted permanent custody of I.T., Jr., to appellee Sandusky County Department of Job and Family Services ("SCDJFS").

[1] Tony has not appealed the termination order and is not a party to this appeal.

{¶ 2} I.T., Jr., was born in October 2006. At the time of his birth, both he and appellant, his mother, tested positive for cocaine. Appellant had also tested positive for cocaine in September while pregnant with I.T., Jr. While still in the hospital following I.T., Jr.'s birth, appellant was visited by Debbie Lonsway, an investigator with appellee. Appellant told Lonsway that she had only used cocaine twice during her pregnancy, that she smoked marijuana throughout her pregnancy at least once a week, and that it was "not that big of a deal." When questioned about I.T., Jr.'s father, appellant responded that she did not know who his father was because she had been drinking at a party when she became pregnant and did not remember who she had been with. At the time of I.T., Jr.'s birth, appellant was also the mother of a two year old boy and a four year old girl, neither of whom are the subjects of this appeal. Appellant did, however, have a history with appellee regarding these two children. In particular, appellee had opened an investigation in May 2006, after appellant and her father, Tony, had been found smoking marijuana in a car with the two children in the back seat.

{¶ 3} On October 24, 2006, the lower court issued an emergency ex-party order granting custody of all three of appellant's children to appellee. The following day, appellee filed a complaint in dependency and neglect which alleged the above facts, further alleged that there were no friends or relatives of the children who would be available or appropriate for placement, and requested temporary custody of the children. At the adjudicatory hearing of December 8, 2006, appellant consented to a finding of dependency as to all three children and to a finding of neglect as to I.T., Jr. At a

subsequent dispositional hearing, appellant consented to the children being placed in the temporary custody of appellee and consented to the case plan, which appellee had previously filed and the court approved. The goal of the case plan was reunification. Under the initial case plan, appellant was to participate in, attend and successfully complete drug and alcohol treatment; cooperate with service providers in providing drug screens as required; attend, participate in and successfully complete an agency approved parenting class; and be drug and alcohol free.

{¶ 4} From very early on in the case, appellant demonstrated a chronic inability to comply with the case plan services. In February 2007, appellee filed a motion to show cause as to why appellant should not be found in contempt for her failure to follow the recommendations of the treatment providers. Subsequently, appellant was found to be in contempt for her failure to comply with the case plan by not participating in individual counseling and standardized urinalysis testing for illegal drug and alcohol use. The court then sentenced her to 30 days incarceration but suspended the sentence on the condition that she comply with the case plan requirements. In that same order, dated May 4, 2007, regarding the April 18, 2007 dispositional review hearing, the court continued the temporary custody order. In addition, around that time, appellant's father, Tony, informed Gabrielle Henry, the SCDJFS ongoing caseworker for appellant and her children, that he was the father of I.T., Jr. Although he initially stated that he and appellant made up the story that he was appellant's father, subsequent genetic testing revealed that Tony is the father of both appellant and her youngest child. Tony was

therefore added as a party to the proceedings below. Tony is a registered sex offender who is required to comply with the registration requirements applicable to sexually oriented offenders. He was convicted of gross sexual imposition in January 2008. The victim of that offense was appellant.

{¶ 5} On May 21, 2007, appellee filed a motion to impose the suspended sentence on appellant. The motion asserted that appellant had failed to comply with the court's order by failing to show up for urinalysis testing on April 20 and 23, 2007, by testing positive for THC on April 24, 27 and 30, and May 4 and 7, 2007, by testing positive for cocaine on April 27 and May 7, 2007, and by providing diluted urine on April 24 and 25. The lower court held a hearing on the motion and, in a judgment entry dated June 26, 2007, granted appellee's motion to impose the suspended sentence. In its entry, the lower court noted the above testing history and found that appellant had discontinued substance abuse treatment services with Firelands Counseling and Recovery Services when they recommended that she enter a residential treatment program. Thereafter, appellant entered an intensive outpatient program with Lutheran Social Services ("LSS"). When she continued to test positive for drug use, however, that agency also recommended that she enter a residential drug treatment program. Again, appellant refused. Due to appellant's continued refusal of further services, LSS closed her case. At the hearing on the motion to impose the suspended sentence, appellant stated that she did not know she could not use drugs while a patient in a drug treatment program. The court found this statement not credible. The court also found appellant's allegation that

appellee was contaminating her urine specimens, causing them to be positive, to be not credible. The court further stated that appellant's outright refusal to comply with the terms of the case plan and her continued active drug use made reunification at that time impossible. Finally, the court stated that except for appellant's maintaining regular supervised parenting time with her children, she had done little to remedy the problems that caused the children to be removed from her home.

{¶ 6} Appellant entered the Sandusky County Jail on July 26, 2007. On August 2, 2007, she filed a motion for early release in which she agreed to enter an in-patient treatment program at Compass House upon her release from jail and requested early release so that she could complete her case plan services and work toward reunification with her children. After a hearing on the matter, the lower court denied the motion and ordered appellant to remain in jail for the balance of her sentence. At the dispositional review hearing on the same day, the court again continued the order granting temporary custody of the children to appellee after determining that neither appellant nor Tony were complying with their case plans.

{¶ 7} On August 9, 2007, the lower court filed a judgment entry ordering appellant to be released from the Sandusky County Jail on August 13, 2007, to the custody of Gabrielle Henry for the purposes of transporting her to Compass House. The court further ordered that if appellant refused to attend the treatment program at Compass House, unsuccessfully completed the program, or left without the permission of Compass

House, she was to report to the Sandusky County Jail to serve the remainder of her suspended jail sentence.

{¶ 8} On September 25, 2007, appellee filed a motion requesting modification of the temporary custody of the children to permanent custody. In that motion, appellee reviewed the history of the case to date and indicated that on September 18, 2007, appellant's therapist indicated that appellant was in the very early stages of recovery and Compass House could not yet determine how long she would need to stay at the in-patient treatment center. The motion further revealed, however, that appellant indicated to her therapist at Compass House that she wanted to attend couples counseling with Tony, her father. The motion then indicated that on September 25, 2007, appellant's therapist at Compass House called Gabrielle Henry and reported that appellant was being discharged and that she had received the maximum benefit she could from the program. The therapist recommended that appellant enter into an intensive outpatient treatment program as she still did not recognize the disease model of addiction and failed to recognize the consequences of her drug use. Finally, with regard to Tony, the motion to modify stated that he had failed to attend three scheduled appointments for a drug and alcohol assessment and that although he was attending individual counseling, the issues of being the father of his daughter's child had not been fully addressed. On December 7, 2007, appellee filed a motion to amend their motion to modify temporary custody to permanent custody to add language pursuant to R.C. 2151.414(B)(1)(d) that as of that

date, I.T., Jr., had been in the temporary custody of appellee for 12 or more months of a consecutive 22 month period. The court granted the motion.

{¶ 9} At a dispositional review hearing of January 7, 2008, the lower court determined that appellant and Tony were then complying with their case plan. The court therefore ordered that the temporary custody order be continued but set the motion to modify for a hearing. Appellee refiled its motion to modify temporary custody to permanent custody two times before the case proceeded to a hearing on November 24 and 25, 2008. The history of appellant's failure to comply with the case plan was confirmed by the testimony at the hearing. In addition, the following testimony was submitted to the court.

{¶ 10} Rose Mary W., the foster mother with whom all three children were placed upon their removal from appellant's custody, testified that I.T., Jr., is not a good sleeper or eater, has been slow to gain weight and needs a lot of caretaking. Rose Mary stated that throughout the case, she has taken the children to their visits with appellant and Tony at the Village House or a treatment center. Although appellant initially maintained regular visits with the children, in the fall of 2007, she began to miss visits. Rose Mary also testified that when I.T., Jr., was approximately seven months old and eating baby food, she would bring the food along to the visits and explain to appellant what he would eat so that appellant could feed him. When I.T., Jr., was returned to her, he would be very hungry because appellant had not fed him. Eventually she stopped sending the food because appellant said she was bringing her own. However, Rose Mary testified, when

I.T., Jr., was returned to her he would still be very hungry. With regard to I.T., Jr.'s development, Rose Mary stated that he had met his milestones but that his speech was delayed and so he would be starting an early intervention class to prod him to talk more. She also added that given his in utero drug exposure, his development would need to be closely monitored. Finally, because I.T., Jr., had lived with her since he was three days old, Rose Mary testified that he was very attached to his foster family.

{¶ 11} Several witnesses testified regarding appellant's drug dependence and inability to successfully complete a drug treatment program. At the time of appellant's first assessment at TASC, in November 2006, she was 20 years old. She reported that she had started using marijuana when she was 13 and cocaine when she was 16. Appellant continued to use, her drug tests continued to come back positive, and she did not successfully complete the TASC program. Appellant did, however, acknowledge that she had a substance abuse problem. Appellant was also assessed by Lutheran Social Services, where she was diagnosed as marijuana and cocaine dependent. There, she was placed in an adult intensive outpatient group treatment program, but her attendance was inconsistent. Eventually she was dismissed from the program for her continual positive drug tests. Finally, although appellant did complete the inpatient program at Compass House, and entered an aftercare program upon her release, her success was short lived, and in February 2008, her aftercare case was closed as unsuccessful.

{¶ 12} Mary Lou Hodges, appellant's parent aid, testified that she was assigned to appellant's case to assist her with parenting skills, obtaining housing, budgeting issues,

and obtaining her GED. One of the housing issues that was raised was the need for appellant to find housing independent of her father. Throughout the history of this case, however, appellant never obtained housing independent of her father. With regard to parenting issues, appellant did attend some parenting classes, but in March 2008, Hodges was advised to close the parent aid case because appellant missed so many appointments. Appellant also failed to meet with the youth program representative who was going to help her obtain her GED. Hodges did testify, however, that appellant's interaction with her children was appropriate during her visits with them.

{¶ 13} Lisa Chaffin from Sandusky County Child Support, testified that there had been a child support order in place regarding appellant as of October 24, 2006. Chaffin stated that over the course of the case, appellant had made a total of 18 child support payments and had made no payments since March 17, 2008. She further testified that, despite enforcement letters, appellant had never contacted her to inform her of her current address. Nevertheless, Chaffin has kept abreast of appellant's addresses and learned that as recently as November 21, 2008, just days before the hearing, appellant and her father were living at the Double A Motel in Fremont, Ohio. Finally, Chaffin testified that appellant was $2,050.85 in arrears on her child support payments.

{¶ 14} Gabrielle Henry, the SCDJFS caseworker assigned to this case, testified regarding the case plan services offered to appellant and her failure to comply with the bulk of them as discussed above. In particular, Henry testified that appellant had not engaged in any case plan services since the beginning of 2008. One of the issues that

Henry discussed, and that permeated this case, was the fact that appellant's father fathered I.T., Jr. Henry testified that when she discussed the issue with appellant, appellant seemed upset but that she wanted to engage in couples counseling with Tony. Another ongoing concern was appellant's lack of consistency and how it affected her children. This was particularly of concern when appellant would cancel visits with the children or not show up for visits. With regard to housing issues, Henry testified that although appellant's address had consistently been the same throughout most of the case, she lived with her father and at times stayed elsewhere. Then, shortly before the hearing, she and her father moved into a motel together. Henry further testified that appellant never completed parenting or drug treatment and that the issues that caused the children to be removed from her care had not been resolved. Henry did not believe that appellant was capable of protecting I.T., Jr., if he were returned to her, and she stated that if the agency received permanent custody of I.T., Jr., the plan for him would be adoption.

{¶ 15} Finally, Connye Houk, the guardian ad litem/ court appointed special advocate assigned to this case, testified. She had also filed a report and recommendations with the court. Houk had serious concerns about appellant's ability to parent, her drug addiction, and her ongoing sexual relationship with her father. She therefore recommended that permanent custody of I.T., Jr. be awarded to appellee.

{¶ 16} On December 9, 2008, the lower court issued findings of fact, conclusions of law and a judgment entry terminating the parental rights of appellant and Tony and granting permanent custody of I.T., Jr., to appellee. On the issue of whether I.T., Jr.,

could be placed with either parent within a reasonable time or should be placed with either parent, the court expressly found that following the placement of I.T., Jr., outside his mother's home, and notwithstanding reasonable case planning and diligent efforts by appellee to assist the parents to remedy the problems that initially caused I.T., Jr., to be placed outside the home, appellant failed continuously and repeatedly to substantially remedy the conditions causing I.T., Jr., to be placed in the temporary custody of appellee. The court further found that appellant and Tony suffered from chronic chemical dependency that was so severe it rendered each of them unable to provide an adequate permanent home for I.T., Jr. at that time and within one year after the conclusion of the hearing; that appellant and Tony continuously demonstrated a lack of commitment toward I.T., Jr., by failing to regularly support, visit, or communicate with him when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for him; that appellant and Tony placed I.T., Jr., at a substantial risk of harm two or more times due to drug abuse and rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan requiring treatment was journalized as part of a disposition order with respect to I.T., Jr.; that appellant and Tony were unwilling to provide food, clothing, shelter, and other basic necessities for I.T., Jr.; and that Tony, as a registered sex offender, lacked the values and an understanding of the proper boundaries necessary for healthy personal relationships and, as a consequence, was unable to instill them in his child.

{¶ 17} On the issue of the best interest of I.T., Jr., the court expressly found that I.T., Jr., was bonded with his foster family; that he appeared to be readily adoptable and, although he has some medical and developmental issues, his caretakers will not need special training to care for him; that I.T., Jr., has been with the same foster family since he was three days old and has never been cared for by his biological parents; that I.T., Jr., needs a legally secure placement that can only be achieved through a grant of permanent custody to appellee; and that reasonable efforts were made by appellee to make it possible for I.T., Jr., to return home. The court further determined that I.T., Jr., had been in the temporary custody of appellee for 12 or more months of a consecutive 22-month period. The court therefore concluded that permanent custody of I.T., Jr., to appellee was in his best interest. It is from that judgment that appellant now appeals.

{¶ 18} Appellant's two assignments of error are interrelated and will be discussed together. Appellant asserts that the lower court's judgment granting permanent custody of I.T., Jr., to appellee was in error because the court's best interest finding was not supported by clear and convincing evidence and because the court failed to include in its findings substantial and relevant evidence of the positive efforts appellant had made to visit and care for her children on her visits.

{¶ 19} The disposition of a child determined to be dependent, neglected or abused is controlled by R.C. 2151.353 and the court may enter any order of disposition provided for in R.C. 2151.353(A). Before the court can grant permanent custody of a child to a public services agency, however, the court must determine: (1) pursuant to R.C.

2151.414(E) that the child cannot be placed with one of his parents within a reasonable time or should not be placed with a parent; and (2) pursuant to R.C. 2151.414(D), that the permanent commitment is in the best interest of the child. R.C. 2151.353(A)(4). R.C. 2151.414(E) provides that, in determining whether a child cannot be placed with a parent within a reasonable time or should not be placed with a parent, the court shall consider all relevant evidence. If, however, the court determines by clear and convincing evidence that any one of the 16 factors listed in the statute, exist, the court must find that the child cannot be placed with a parent within a reasonable time or should not be placed with a parent. Those factors include:

{¶ 20} "(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

{¶ 21} "(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes

the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A) (4) of section 2151.353 * * * of the Revised Code;

{¶ 22} "* * *

{¶ 23} "(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

{¶ 24} "* * *

{¶ 25} "(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 * * * of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

{¶ 26} "* * *

{¶ 27} "(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

{¶ 28} "* * *

{¶ 29} "(16) Any other factor the court considers relevant." R.C. 2151.414(E).

{¶ 30} Clear and convincing evidence is that proof which establishes in the mind of the trier of fact a firm conviction as to the allegations sought to be proven. *Cross v. Ledford* (1954), 161 Ohio St. 469. In determining the best interest of the child, R.C. 2151.414(D) directs that the court shall consider all relevant factors, including, but not limited to:

{¶ 31} "(1) 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;

{¶ 32} "(2) 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;

{¶ 33} "(3) 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 ending on or after March 18, 1999;

{¶ 34} "(4) 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;

{¶ 35} "(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 36} "For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home."

{¶ 37} Upon a thorough review of the record in this case, we conclude that the trial court's findings that I.T., Jr., could not be placed with appellant within a reasonable time and should not be placed with appellant and that permanent custody was in I.T., Jr.'s best interest were overwhelmingly supported by clear and convincing evidence. The court's express findings under R.C. 2151.414(E)(1), (4), (9) and (14), with regard to appellant mandated a finding that I.T., Jr., could not and should not be placed with appellant.

{¶ 38} Appellant contends that the trial court abused its discretion in finding that permanent custody was in I.T., Jr.'s best interest because, in appellant's view, the court failed to consider and weigh evidence favorable to her. Specifically, appellant asserts that the court failed to consider the close bond that she has with all of her children, that they were healthy and well cared for when they were removed from her custody, and that appellant did make some progress in her struggle with drug dependence. The standard, however, is whether the court's best interest finding is supported by clear and convincing evidence. We find that it was. In particular, we note the court's findings that I.T., Jr., had been in the temporary custody of appellee for 12 or more months of a consecutive 22-month period and his need for a legally secure permanent placement. Given appellant's history of chronic drug dependence, there was no telling when she may be able and ready

to care for I.T., Jr.. Moreover, appellant was still living with her father at the time of the hearing below and had never fully addressed the inappropriate nature of their relationship. Finally, contrary to appellant's assertion that her children were healthy when they were removed from her custody, I.T., Jr., was born with cocaine in his system.

{¶ 39} Accordingly, because the trial court's best interest finding was supported by clear and convincing evidence, the assignments of error are not well-taken.

{¶ 40} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Sandusky County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE
CONCUR.