[Cite as *In re D.P.*, 2010-Ohio-5024.]

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

In the Matter of: D.P.

Court of Appeals No. L-10-1155

Trial Court No. 09192986

DECISION AND JUDGMENT

Decided: October 15, 2010

* * * * *

Mary C. Clark, for appellant.

David T. Rudebock, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of C.M. ("mother") and appellant S.P. ("father"), the natural parents of D.P., and granted permanent custody of D.P. to appellee Lucas County Children Services ("LCCS") for adoptive placement and

planning. Father now challenges that judgment through the following assignment of error:

{¶ 2} "The trial court's judgment that the requirements of O.R.C. § 2151.414(E) were satisfied was not supported by clear and convincing evidence."

{¶ 3} D.P. was born in April 2009. At the time of his birth, mother lived in Lucas County, Ohio, but she gave birth to D.P. in Franklin County, Ohio. Mother has a history of substance abuse and D.P. tested positive for cocaine at birth. Immediately following his birth, emergency shelter care custody of D.P. was awarded to LCCS upon a finding that there was probable cause to believe that he was in immediate danger. The facts cited by the court in support of its decision were mother's long history of crack cocaine abuse, D.P.'s showing signs of withdrawal, and that mother had lost all of her other children to LCCS. The court also noted that father's whereabouts were unknown.

{¶ 4} Thereafter, LCCS filed a complaint in dependency and neglect and a motion for a shelter care hearing in the court below. On May 12, 2009, mother filed a motion in the lower court to transfer the case to Franklin County, Ohio. Mother requested the change because she then resided in Franklin County, and had entered a parenting program, had mental health and drug assessments, and had been scheduled for treatment, all in the Columbus area. She asked that D.P. be moved to Columbus so she could visit him regularly and bond with him while working on her case plan services. The lower court granted the motion and, on June 17, 2009, transferred the case to Franklin County. The children services caseworker assigned to the case in Franklin

County, however, was unable to verify that either mother or father lived in Franklin County. The Franklin County Juvenile Court, therefore, declined to accept jurisdiction of the matter, and the case was returned to the court below for further proceedings.

{¶ 5} After a hearing on December 14, 2009, the lower court adjudged D.P. dependent and neglected and awarded temporary custody of him to appellee. Neither mother nor father attended the hearing. The court also approved the case plan that had been filed with the court on November 20, 2009. Two previous plans had also been filed with the court. The goal of all the case plans was reunification. At that time, the parents were living in a homeless shelter in Columbus. Because the shelter would not acknowledge their residency, service was perfected on them by publication. In addition, they had not seen D.P. or their caseworker since May 26, 2009.

{¶ 6} On January 11, 2010, appellee filed a motion for permanent custody of D.P. The case proceeded to trial on May 7 and 10, 2010. Despite being properly served and duly notified, neither mother nor father appeared for the trial. At the trial, the following evidence was presented.

{¶ 7} Deborah Proe, the LCCS caseworker who was assigned to the case from D.P.'s birth until shortly before the trial, testified that she had previously worked with mother regarding her other four children. As of the date of the trial below, all of those children had been removed from mother's care, two of whom had been adopted by the foster parent who was then caring for D.P. The agency, however, had never before worked with appellant, who was not the father of mother's other children. Under the case

plan, appellant was required to undergo a diagnostic assessment and to follow all recommendations made for him. Although he did undergo the assessment, it was recommended that he enter counseling for drug treatment and he did not follow through with that service. He was also required to maintain stable housing. Proe testified that because she had not spoken to appellant since November 2009, she could not confirm where he was living. She had, however, spoken with mother in April 2010, who indicated that appellant had been living with her in a homeless shelter in Columbus, Ohio. The circumstances of that telephone conversation are disturbing. Proe testified that the hospital where mother was being treated as a psychiatric patient, notified LCCS that mother was planning to blow up the agency. Mother had given the hospital the address and telephone number of the homeless shelter where she had been living. This was the same information mother had supplied to Proe. Proe then left a message for mother at that shelter and mother returned her call. During that conversation, mother stated that she had completed all of her services except for the drug treatment and mental health services. Proe stated, however, that those were the most important services that needed to be completed. In addition, mother confirmed that she was still living in the homeless shelter.

{¶ 8} With regard to visitation, the case plan provided for appellant and mother to have weekly supervised visitation with D.P. Proe testified, however, that the last time either parent visited D.P. was on May 26, 2009. Because they lived in Columbus, Proe arranged to send them bus tickets to travel to Toledo to visit D.P., but they never came.

The case plan also allowed them to have telephone contact with the foster parent and they were given the foster parent's telephone number, but they never contacted her. With regard to appellant, Proe stated that he had not maintained contact in any manner with respect to his child.

{¶ 9} On the issue of stable housing, Proe testified that she learned appellant had obtained a job in Columbus in June 2009 and that the couple had moved into an apartment. Within a month, however, appellant had lost his job and the couple moved back into a homeless shelter. As such, they never established stable housing during the period of the proceedings below.

{¶ 10} With regard to D.P., Proe testified that he was placed in a home with a foster mother who had adopted his biological half-brother and half-sister and who had expressed a desire to adopt D.P. should he become available for adoption. Proe described the foster mother as a very loving and caring parent. Proe noted that the foster mother was open to allowing some sort of contact between the children and mother once mother completed her services and got her life back on track. Nevertheless, Proe opined that LCCS believed an award of permanent custody was in D.P.'s best interest.

{¶ 11} Julie Miller, the LCCS caseworker who took over the case from Proe, also testified at the trial below. Miller had only been on the case for about two weeks before the hearing. During that time period, however, and despite her attempts to contact them, Miller had no contact with either mother or appellant. She further stated that the foster mother had no contact with either parent during that time.

{¶ 12} Finally, Ernest Bollinger, the guardian ad litem assigned to this case, submitted a report and recommendation and testified at the hearing below. Bollinger had also been the guardian ad litem appointed during the termination proceedings regarding another of mother's children. Bollinger stated that although he had independently investigated the situation, his investigation was somewhat limited because his attempts to contact either parent had been unsuccessful. Nevertheless, he had reviewed the LCCS records regarding the family and had spent time with D.P. and his foster family at the foster home. Based on the information he gathered, Bollinger opined that an award of permanent custody to appellee so that D.P could be adopted would be in D.P.'s best interest.

{¶ 13} On June 8, 2010, the lower court issued a judgment entry terminating the parental rights of appellant and mother and granting permanent custody of D.P. to appellee. On the issue of whether D.P. could be placed with either parent within a reasonable time or should be placed with either parent, the court expressly found that both parents had failed continuously and repeatedly to substantially remedy the conditions causing D.P. to be placed outside of his home. In making this determination, the court found that neither parent had utilized the services of substance abuse treatment agencies or mental health agencies, had failed to maintain communication with caseworkers, had failed to formulate a bond with D.P., and had failed to engage in case plan services despite the efforts of caseworkers to assist them.

{¶ 14} The court further found that mother had a chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency that was so severe that it made her unable to provide an adequate permanent home for D.P. at the present time or within one year from the date of the hearing.

{¶ 15} The court next found that both parents had demonstrated a lack of commitment to D.P. 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 D.P. In particular, the court noted that neither parent had visited with D.P. since May 26, 2009, and neither parent had contacted the foster parent since that same date. Accordingly, the court determined that both appellant and mother had abandoned D.P. The court further determined that mother had had her parental rights involuntarily terminated with respect to D.P.'s half-siblings.

{¶ 16} Finally, the court found that both parents failed to appear at the hearing below, failed to maintain contact with the attorneys who were formally appointed to represent them, and failed to maintain contact with the caseworker and guardian ad litem.

{¶ 17} On the issue of D.P.'s best interest, the court found that his needs were being met in his foster placement, that he deserved permanency, and that his foster mother had adopted two of his biological half-siblings. The court, therefore, found that an award of permanent custody to appellee was in D.P.'s best interest. It is from that judgment that father appeals.

{¶ 18} In his sole assignment of error, father asserts that the trial court's findings made pursuant to R.C. 2151.414(E) were not supported by clear and convincing evidence.

{¶ 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[1]:

{¶ 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

[1]Because mother has not appealed the trial court's judgment, we will only list the factors that the trial court found relative to appellant-father.

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 parent 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} "* * *

{¶ 22} "(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;

{¶ 23} "* * *

{¶ 24} "(10) The parent has abandoned the child.

{¶ 25} "* * *

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

{¶ 27} 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:

{¶ 28} "(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;

{¶ 29} "(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;

{¶ 30} "(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 19, 1999;

{¶ 31} "(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;

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

{¶ 33} Upon a thorough review of the record in this case, we conclude that the trial court's findings that D.P. could not be placed with appellant within a reasonable time and should not be placed with appellant were supported by clear and convincing evidence. The trial court made express findings under R.C. 2151.414(E)(1), (4), (10) and (16) with regard to appellant. Appellant claims that he was in contact with the foster mother and, so, the court should not have made these findings. Appellant, however, did not attend the hearing below, despite being duly notified of it. At that hearing, the caseworkers and the

guardian ad litem all testified that neither appellant nor mother had been in contact with the foster mother, despite being told they could contact her and being given her telephone number. Because the court's findings under R.C. 2151.414(E) were supported by clear and convincing evidence, the court was required to find that D.P. could not and should not be placed with appellant. The sole assignment of error is not well-taken.

{¶ 34} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Lucas 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

Keila D. Cosme, J. _____
CONCUR.
JUDGE