

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

In the Matter of: L.C.

Court of Appeals No. L-09-1250

Trial Court No. JC 07171419

DECISION AND JUDGMENT

Decided: February 26, 2010

* * * * *

Howard C. Whitcomb, III, for appellant.

Jeremy G. Young, for appellee.

* * * * *

COSME, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, Juvenile Division, which terminated appellant's parental rights and granted permanent custody of L.C., a minor child, to Lucas County Children Services Board ("LCCS"). We conclude that the trial court's findings regarding parental unfitness

under R.C. 2151.414(E) and the child's best interest, under R.C. 2151.414(D), were supported by clear and convincing evidence. Therefore, we affirm the judgment of the trial court.

{¶ 2} Appellant is the biological mother of L.C., a female child born in 1997. In August 2007, mother was arrested on drug related charges. LCCS filed a complaint in dependency and neglect, pursuant to R.C. 2151.004 and 2151.03, et seq., alleging that the police report indicated that mother had been "extremely intoxicated" and appeared to be "high." LCCS also alleged the following. Mother reported she and L.C. had just moved from Wisconsin to Toledo at her boyfriend's request. Police had indicated that the boyfriend lives in a known "crack house" and mother was charged with possession of drug paraphernalia, a crack pipe, disorderly conduct-intoxication, and child endangering. At an LCCS staffing for L.C., mother admitted to using crack cocaine, alcohol, and marijuana within the twenty-four hours prior to her arrest, and that domestic violence had occurred between her and her boyfriend. The complaint also alleged that father was a registered sex offender and was incarcerated in Wisconsin on a drug conviction.

{¶ 3} In October 2007, by agreement among the parties, L.C. was adjudicated to be dependent and neglected. Since father was incarcerated in Wisconsin and no other relatives were then available for placement, the court awarded temporary custody of L.C. to LCCS. A case plan was implemented with reunification as the goal, and mother was referred to services and classes for the following: mental health and substance abuse, housing, domestic violence, and parenting.

{¶ 4} In June 2009, LCCS filed a motion for permanent custody with an amended case plan. On August 28, 2009, a dispositional hearing was conducted to determine whether permanent custody should be awarded to LCCS and the following evidence was presented. Father remained incarcerated and mother did not appear for the hearing, even though her counsel had recently spoken with her and she was aware of the time and date.

{¶ 5} Rebecca Batchler, LCCS caseworker, testified that mother completed a substance abuse and mental health assessment in September 2007. Mother was referred to Unison's Joint Venture Program, which addresses both mental health and substance abuse issues. She began attending but did not complete those services, and was ultimately discharged from the program after she continued to test positive for drug use. In December 2007, mother was referred to inpatient services at Compass, another substance abuse treatment provider, but she continued to be non-compliant with the case plan and to test positive for drugs.

{¶ 6} In January 2008, she was again assessed for the Compass inpatient program, but tested positive for mood altering and stabilizing drugs known as benzodiazepines ("benzos"). Common drugs in this classification are Xanax and Valium. Because of the medical dangers associated with these drugs, such as seizures, Compass referred her for detoxification at Toledo Hospital on January 11, 2008. Since mother refused to go to "detox" and said she was just going to go home, the agency again tried to get her admitted into Compass. At the end of January 2008, Compass again refused to take her because she tested positive for cocaine, marijuana, and benzos.

{¶ 7} Throughout the next several months, the agency was able to link mother with a substance abuse mentor and Unison allowed her to remain in its program, even though she continued to test positive for drug use. In May 2008, however, she was finally discharged from the program for dirty drug screens and noncompliance with treatment. Mother was referred again for inpatient treatment and, in June 2008, was accepted into Compass. She completed a 54-day program and was released in early August 2008. Within a few weeks after her discharge, however, mother again tested positive for benzos and cocaine. She then went to Wisconsin, and did not return to the Toledo area until March 2009.

{¶ 8} On her return, mother again did a substance abuse assessment in April 2009, and was again recommended for inpatient services at Unison. Unison determined that, because of her drug usage, it could not provide the proper level of care. Mother was again referred to inpatient at Compass, but she did not go. Mother's last positive screen provided to the agency was July 30, 2009.

{¶ 9} Regarding mental health services, mother initially did not attend sessions with the referred therapist, but did receive some treatment during the intermittent inpatient services at Compass. Mother began seeing a counselor at Family Services of Northwest Ohio in May 2009, a year and a half after the case had been opened. However, mother had missed two of her four weekly counseling appointments during the month prior to the hearing.

{¶ 10} The caseworker also testified that, since the removal of her child, mother has had no stable, independent housing, living with friends or in various shelters. Mother was also referred for domestic violence services, but did not participate in the initial referral. She received such services twice, in October 2007 and February 2008, when she stayed at the YMCA shelter. Otherwise, mother had not performed or successfully completed any other domestic violence services. Since mother was unable to successfully complete mental health and substance abuse treatment, she was ineligible for any parenting programs.

{¶ 11} The caseworker also testified that L.C. was placed with an approved relative in Wisconsin in August 2008. When mother moved back to Wisconsin and was not participating in any treatment programs, that placement was disrupted. Mother caused problems for the relative and upset the child because mother's behavior was threatening and inappropriate. L.C. began exhibiting defiant behavior, such as lying and stealing money from the relative and her church. Because of the disruption, L.C. was returned to Toledo and placed in a foster home in March 2009.

{¶ 12} Mother had visitations at the agency with L.C. which were scheduled from 9:00 to 11:00 on Saturday mornings. She sometimes missed a visit, later explaining that she overslept, the appointment was too early, she was out of town, or her ride did not show. Mother would also often miss weekly phone calls to L.C. At first, when mother failed to show or call, L.C. would be upset and return home crying. As time has passed,

she has become less affected by the missed visits and calls, making excuses for her mother.

{¶ 13} The caseworker stated that, although father may be released from prison earlier, he could be incarcerated until 2017, depending on various factors related to his prison behavior. L.C. had limited contact with him: one phone call, a few sporadic letters, and some visits while she was in Wisconsin. Father's counsel stated that she had spoken with father who was not in agreement with permanent custody to the agency. Father presented no evidence or witnesses on his own behalf.

{¶ 14} The caseworker also stated that L.C. has special needs, having been diagnosed with ADHD and hepatitis C. She contracted hepatitis C from mother at birth. L.C. takes medications for both conditions, and requires blood work every three months and liver biopsies. At some point in the future, she will likely need a liver transplant. L.C. attends counseling and is making progress there, as well as in her foster home. She has called the foster mother "Mom" since the first day of placement and has expressed her desire to stay with and be adopted by her.

{¶ 15} Mary Sawers, the guardian ad litem, then testified that she had recently viewed medical records related to mother's admission to St. Vincent's Hospital and evaluation at Rescue Crisis because she had overdosed on drugs. Sawers expressed concern that mother's mental health conditions remain untreated, that she was unable to utilize any services provided to her, and that she continued to test positive for benzos, opiates, barbiturates, and marijuana. Sawers also testified that she had observed L.C. in

her foster home, where she is respectful of the relationship with the foster mother and has bonded strongly with the other children in that home. Although L.C. is disappointed that her mother cannot care for her, the guardian ad litem confirmed that L.C. is very comfortable and secure in her foster placement and wants to live there. Sawers agreed with that placement, and recommended that LCCS be granted permanent custody of L.C.

{¶ 16} After the close of the evidence, the court found the following parental fitness factors applied: in regard to mother, R.C. 2151.414(E)(1), (2), (4), and (16), and, as to father, R.C. 2151.414(E)(4), (12) or (13), and (16). The court specifically found that mother is a chronic drug addict with significant mental health concerns. Mother has been unable to address those issues through services offered to her. In addition, mother has never had stable housing, did not complete domestic violence services, and could not address parenting class needs because of the chronic substance abuse and mental health concerns. Mother has failed to visit with the child on a consistent basis, missing six visits since her return to Toledo. The court also found that father is incarcerated, with no definite scheduled release date, and has had very limited contact with L.C. Neither mother nor father have provided any monetary support.

{¶ 17} The court further found that L.C. has special needs. Her ADHD and hepatitis C require treatments and needs which are currently being addressed in placement. She is very comfortable, secure, and bonded with her foster mother who is willing to adopt her. By judgment entry issued on September 16, 2009, the court found, by clear and convincing evidence, that despite reasonable efforts to prevent the child's

removal from her parents, L.C. could not and should not be returned to her parents and it is in the best interest of the child to grant permanent custody to LCCS.

{¶ 18} Appellant mother now appeals from that judgment, arguing the following sole assignment of error:

{¶ 19} "I. The trial court erred in granting Lucas County Children Services Board's motion for permanent custody as it was against the sufficiency and/or manifest weight of the evidence to grant it."

{¶ 20} On appeal, an appellate court will not reverse a trial court's termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence. See *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368. "Clear and convincing evidence" is that measure or degree of proof which is more than a mere preponderance of the evidence but less than proof beyond a reasonable doubt. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, citing to *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. It produces in the mind of the fact-finder a firm belief or conviction as to the facts sought to be established. *Id.*

{¶ 21} With respect to the final disposition of a child adjudicated to be dependent or neglected, R.C. 2151.353(A)(4) provides that, in order to grant permanent custody to a public children services agency, the court must determine, "in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code

that the permanent commitment is in the best interest of the child." See, also, *In re William S.* (1996), 75 Ohio St.3d 95, syllabus.

{¶ 22} R.C. 2151.414(E) provides, in pertinent part, that:

{¶ 23} "(E) In determining * * * whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶ 24} "(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.

{¶ 25} "(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent * * * 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 * * *.

{¶ 26} "* * *

{¶ 27} "(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;

{¶ 28} "* * *

{¶ 29} "(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

{¶ 30} "(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

{¶ 31} "* * *

{¶ 32} "(16) Any other factor the court considers relevant."

{¶ 33} In determining the best interest of the child, R.C. 2151.414(D) provides that:

{¶ 34} "[T]he court shall consider all relevant factors, including, but not limited to, the following:

{¶ 35} "(a) 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;

{¶ 36} "(b) 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;

{¶ 37} "(c) 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

{¶ 38} "(d) 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;

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

{¶ 40} In this case, the record demonstrates that mother exhibited chronic untreated mental illness and chemical dependency, had failed to support her child or establish stable housing, and was unable to attend parenting classes. Father had no definite release date from incarceration and had also failed to provide any support for the child. Therefore, the evidence supports the court's finding under R.C. 2151.414(E)(1), that the parents had failed to remedy the conditions which caused L.C.'s removal, as well as the other five factors listed by the court. Since the court need find only one of the enumerated factors under R.C. 2151.414(E), the court's finding that the child could not be placed within a reasonable time or should not be placed with the parents, was supported by clear and convincing evidence.

{¶ 41} In making its best interest finding, the court considered evidence presented regarding L.C.'s interaction with all parties involved, her wishes as expressed by the guardian ad litem and the caseworker, her custodial history, her special needs, and her need for a legally secure placement. Consequently, we conclude that the court's finding that permanent custody was in L.C.'s best interest was also supported by clear and convincing evidence.

{¶ 42} Mother argues, however, that she was given insufficient time to complete her services. Contrary to that contention, the facts show that this was not a case involving a parent who had willingly attended and made significant progress in her case

plan, but just needed a little more time to complete services. Rather, mother was unable and unwilling, throughout the entire temporary custody period of more than two years, to avail herself of programs offered multiple times by multiple providers to treat her severe substance abuse and mental health issues. Even after finally completing the 54 day program at Compass, mother was unable to remain sober and drug-free. Finally, despite mother's belated attempt at counseling in the few months prior to the permanent custody hearing, her failure to attend the permanent custody hearing or to address her substance abuse issues illustrates why permanent custody is in L.C.'s best interest.

{¶ 43} In addition, mother argues that permanent custody should be denied because father might be released from prison soon, and could then be given the opportunity to work a case plan. Her argument fails for two reasons. First, father has not appealed the trial court's decision, and mother may not assert arguments on his behalf. Second, at the time of the hearing, L.C. was almost 12 years old and was beginning to thrive in a stable, nurturing placement, despite her serious medical issues and her disrupted placements. A child is entitled to security and permanency and should not be expected to wait for the uncertain possibility of her father's release from prison, and the even more uncertain possibility of his completion of a case plan. Therefore, we conclude that clear and convincing evidence was presented and the trial court properly granted permanent custody of L.C. to LCCS. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 44} 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Keila D. Cosme, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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