[Cite as *In re I.W.*, 2015-Ohio-559.]

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

In re I.W.

Court of Appeals No. L-14-1210

Trial Court No. JC 14240571

DECISION AND JUDGMENT

Decided: February 13, 2015

* * * * *

Tim A. Dugan, for appellant.

Jill E. Wolff, 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 M.G. (father) and appellant, T.W. (mother), and awarded permanent custody of I.W. to appellee, Lucas County Children's Services ("LCCS"). For the following reasons, we affirm.

{¶ 2} In early July, 2013, appellee received a referral regarding appellant's care of I.W. and concerns regarding appellant's mental health issues and abuse of alcohol. An investigation confirmed appellant's abuse of alcohol. Shortly thereafter, appellee received a second referral when Toledo police had taken I.W. to a hospital after receiving a report that appellant had hit him. I.W. was found to have one large lump on the left side of his head and two smaller lumps on his forehead. I.W. reported that appellant had hit him. Appellant was subsequently arrested and charged with domestic violence and assault. In October, 2013, in the case arising from those referrals, I.W. was determined to be neglected and abused and a case plan was established to provide appellant with services to address her substance abuse, mental health and domestic violence issues.

{¶ 3} Throughout appellant's history with LCCS, alcohol abuse has been a constant problem for her. Appellant did complete a diagnostic assessment, and was referred for substance abuse treatment at Unison. Although she attended classes, she continued to test positive for very high levels of alcohol and was eventually discharged unsuccessfully from Unison. Similarly, appellant never successfully completed a domestic violence program. Because of appellant's lack of progress with regards to her substance abuse, mental health and domestic violence services, she was never able to begin interactive parenting classes.

{¶ 4} On March 4, 2014, legal custody of I.W. was awarded to S.W., appellant's uncle, who had had temporary custody of the child since July 2013. Approximately two months later, appellee received a referral alleging that I.W. had marks and bruises to

multiple areas of his body, including two burn marks on his right arm that appeared to be from a cigarette, whip marks to his back, and old and new loop marks, some of which had begun to scab. Following the referral, appellee substantiated the physical abuse and S.W. admitted to "whooping" the child because he felt that nothing else was working. S.W. relinquished custody of I.W., who was then placed in foster care. In addition, S.W. stated that he did not want the child to return to his home.

{¶ 5} On May 29, 2014, appellee filed a complaint in dependency, neglect and abuse, seeking permanent custody of I.W. That is the case that in now before us on appeal. Following a shelter care hearing, temporary custody of I.W. was awarded to appellee. In addition, at a pretrial, the court granted S.W.'s motion to be dismissed from the case, following his assertion that he could no longer care for the child.

{¶ 6} Subsequently, the case proceeded to both the adjudication and disposition hearings. Initially, neither appellant nor father appeared, despite proper notification. Moreover, counsel for father, having had no contact with his client, moved to withdraw as counsel. The court granted the motion. Appellant's counsel represented to the court that she had spoken to appellant earlier that morning and that appellant was in transit. She then requested a continuance until appellant arrived. The court denied the motion, and the hearing began.

{¶ 7} At the adjudication hearing, Melissa Coburn, from LCCS, and Tymeeka Gipson, the ongoing caseworker for I.W. testified. Coburn substantiated the physical abuse suffered by I.W. Gipson testified as to the facts of the prior case, and particularly

the reasons why I.W. could not be returned to his parents. Gipson stated that appellant's failure to participate in case plan services and her ongoing issues with mental health and substance abuse were of particular concern to appellee. On the issue of appellant's parenting ability, Gipson testified as to the prior incident of substantiated physical abuse of I.W. by appellant. The court then found that I.W. was an abused child and proceeded to disposition. During that hearing, appellant arrived in court.

{¶ 8} Gipson testified that she has been the ongoing caseworker for I.W. since July 2013, when appellee received the referral regarding appellant's physical abuse of I.W. Following the adjudication in that case, a case plan was prepared under which appellant was to complete a diagnostic assessment and follow the recommendations of that assessment. She was also required to obtain housing, engage in and successfully complete domestic violence education classes, and engage in interactive parenting classes. Gipson testified that although appellant completed the diagnostic assessment and attended classes for substance abuse treatment, she continued to test very high for alcohol. When it was explained to her that she was at risk for alcohol poisoning and needed to enter a detox and residential treatment program, appellant refused to go. Appellant was then discharged from the substance abuse treatment program at Unison as noncompliant. Subsequently, appellant agreed to enter detox, but then failed to show. Gipson testified that appellant never successfully completed a substance abuse program.

{¶ 9} Similarly, Gipson testified that appellant never successfully completed the domestic violence program, and only attended two or three sessions. Although appellant

did obtain housing, Gipson testified that appellant was at risk for losing the housing because she was not working during that period of time and her boyfriend had agreed to pay her rent.

{¶ 10} Gipson testified that following the new referral of physical abuse, appellant's issues with respect to mental health, substance abuse, domestic violence, interactive parenting and housing remained the same. Gipson stated that she has had numerous conversations with appellant in which appellant expressed her desire to regain custody of her child. But on the issue of actual treatment, appellant has not made any progress, although she did attend some AA meetings. Gipson testified that she explained to appellant the need for an updated diagnostic assessment, before she could enter a new treatment program. Although appellant told Gipson she would comply, she never did. Gipson stated that since the case was reopened, she has scheduled meetings with appellant, but appellant has failed to show. Similarly, appellant never reengaged in services for domestic violence.

{¶ 11} Regarding appellant's mental health issues, Gipson testified that in the past, appellant had been diagnosed with schizophrenia, but that information had not been relayed to the Zepf Center, where appellant was receiving mental health treatment. Gipson testified that appellant was at that time diagnosed with depression, for which she was taking medication, but that her diagnosis may change if she is given a full scope diagnostic reassessment. Given these issues, Gipson stated that appellant's mental health

continues to be a concern. She further testified on cross-examination that appellant does have some cognitive delays

{¶ 12} Again, Gipson testified that because appellant has made no progress on her substance abuse treatment, she could not be referred to begin an interactive parenting class.

{¶ 13} Gipson also testified to her concerns regarding the father of I.W. Gipson stated that throughout both cases, father's whereabouts have been unknown. To her knowledge, father had only had one contact with I.W. during the prior case and has had no contact with him during the present case. Because of this lack of contact with his child, Gipson stated there was no bond between the two and that father would have no insight into the needs of his child.

{¶ 14} Gipson further testified as to her concerns regarding the criminal histories of both parents. Appellant was previously arrested and charged with abuse of I.W. and, during the onset of that case, there was a no contact order in place. More recently, appellant was charged with two counts of gross sexual imposition, although Gipson did not know the circumstances of those charges. Regardless of who the parties are in that case, Gipson testified that the fact appellant was charged with such a crime gave her concern as to whether I.W. would be at risk in her care, particularly given I.W.'s special needs.

{¶ 15} On the issue of I.W.'s special needs, Gipson testified that I.W. has very limited speech, often bangs his head, has severe tantrums, and has aggressive behaviors

both at school and in a home setting. Although I.W. was initially diagnosed with a pervasive developmental disorder, his current diagnosis is adjustment disorder and a mild intellectual disability. He was recently placed on medication, which has helped stabilize some of his behaviors. Gipson stated that I.W. is currently placed in a treatment foster home and is making progress. She also stated that I.W. is beginning to talk a lot more.

{¶ 16} Gipson testified that appellant was been consistent in her visits with I.W., and that the visits go well. Regardless, Gipson recommended that permanent custody of I.W. be awarded to appellee, with a goal of adoption. Gipson based her recommendation on appellant's lack of progress in the areas of substance abuse, mental health and parenting issues. Given these continuing concerns, Gipson opined that permanent custody was in I.W.'s best interest.

{¶ 17} Anita Levin, the guardian ad litem for I.W. also testified. She stated that she has been the guardian ad litem almost consecutively since July, 2013, and as such she prepared a report and recommendation, that was filed with the court. Based on her investigation, she concluded that I.W. has significant developmental issues, including mental, speech and motor issues. She further stated that I.W. has been subjected to physical abuse throughout his life and that as a result of that abuse, has longstanding behavioral issues. She further testified, however, that his behavior had improved considerably in his current foster home, with the consistent parenting skills of the foster parents and the use of medication. In the course of her involvement with this and the prior case, Levin stated that she has had no contact with father and it was her

understanding that father had no contact with I.W. Regarding appellant, Levin testified that throughout the two cases, appellant has been given the information for services many times, but fails to follow through on any of the services offered. She further stated that appellant does not understand the significance of the abuse that I.W. has suffered, and discounted I.W.'s accusation that she was the perpetrator in the prior case. Given these concerns, the fact that I.W. is improving in his foster home, and I.W.'s need for a permanent home, Levin recommended that permanent custody be awarded to appellee.

{¶ 18} On September 8, 2014, the court issued a decision and judgment entry granting appellee permanent custody of I.W. and terminating the parental rights of appellant and father. In making that determination, the court found by clear and convincing evidence that I.W. cannot and should not be placed with either parent within a reasonable period of time and that an award of permanent custody to appellee was in I.W.'s best interest. Specifically, the court found that unresolved issues of mental health and substance abuse by appellant made her unable to provide an adequate permanent home for I.W. at the present time or within one year of the date of the hearing. In addition, the court found that this was I.W.'s second removal for physical abuse, with the first removal due to physical abuse caused by appellant in July 2013. The court noted that appellant had been convicted of negligent assault as a result of that abuse, and noted that appellant was currently facing two new charges of gross sexual imposition. With regard to father, the court further found that he had shown a lack of commitment to the child by failing to visit I.W. during the course of this case and the prior case, and by

failing to take part in any case plan services. Finally, the court found that I.W. has special needs that require special care and therapy. Based on all of the factors under the statute, the court determined that it was in I.W.'s best interest that permanent custody be awarded to appellee.

{¶ 19} Appellant now challenges that judgment through the following assignment of error:

> Appellee failed to prove by clear and convincing evidence that the children [sic] could not be returned to appellant within a reasonable time and that permanent custody was in the best interests of the children [sic].

{¶ 20} Appellant's assignment of error challenges the manifest weight of the evidence at the trial below. A trial court's judgment will not be overturned as against the manifest weight of the evidence if the record contains competent credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements to terminate parental rights have been established. *In re S.*, 102 Ohio App.3d 338, 344-345, 657 N.E.2d 307 (6th Dist.1995).

{¶ 21} 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 permanent commitment is in the best interest of the child. R.C. 2151.353(A)(4).

{¶ 22} 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 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:

> (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;
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> * * *
>
> (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;
>
> * * *

(16) Any other factor the court considers relevant.

{¶ 23} 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*, 161 Ohio St. 469, 120 N.E.2d 118 (1954).

{¶ 24} In determining the best interest of the child, R.C. 2151.414(D)(1) directs the court to consider all relevant factors, including, but not limited to:

> (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;
>
> (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;
>
> (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;

(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;

(e) Whether any of the factors in division (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 25} We have thoroughly reviewed the record from the proceedings below and find that there was clear and convincing evidence to support the lower court's findings under R.C. 2151.414(E)(2) and (16) with regard to mother, and under R.C. 2151.414(E)(4) with regard to father. Appellant's history of chronic alcohol abuse, as well as her refusal to follow case plan recommendations for treatment, was testified to at length and prevented her from making progress on the parenting aspects of her case plan. Moreover, her prior abuse of I.W., and apparent refusal to acknowledge that abuse despite her conviction on that charge, and I.W.'s special needs were properly taken into consideration by the court under R.C. 2151.414(E)(16). Accordingly, the lower court's finding that I.W. cannot be placed with one of his parents within a reasonable time or should not be placed with a parent was not against the manifest weight of the evidence.

{¶ 26} We further find that the lower court's determination that a permanent commitment was in the best interest of I.W. was supported by the record and was not against the manifest weight of the evidence. Both the ongoing caseworker and the guardian ad litem opined that permanent custody was in the best interest of I.W.

{¶ 27} Accordingly, the sole assignment of error is not well-taken.

{¶ 28} 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

Thomas J. Osowik, J.
____
James D. Jensen, J. JUDGE
CONCUR.
____
JUDGE

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