

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

IN THE MATTER OF:

B.H.

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CASE NO. CA2011-10-023

OPINION
2/27/2012

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 10AND0139

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Kathleen Madden, 5856 Williamsport Park, Williamsport, Ohio 43164, guardian ad litem

RINGLAND, J.

{¶ 1} Appellant, the biological mother of B.H., appeals a decision of the Fayette County Court of Common Pleas, Juvenile Division, granting permanent custody of the child to the Fayette County Department of Job and Family Services.

{¶ 2} At the time of his birth on February 17, 2010, B.H. exhibited symptoms of drug withdrawal. He was transferred from a hospital in Circleville to Nationwide Children's Hospital in Columbus for treatment. Appellant, his mother, tested positive for benzodiazepines at the time of B.H.'s birth. She admitted that during her pregnancy she had used drugs which had not been prescribed by her physician. Nationwide Children's Hospital contacted Fayette County Department of Job and Family Services regarding B.H.'s condition. The agency filed a complaint alleging the child was abused, neglected and dependent. The court granted emergency temporary custody to the agency and the child was placed in a foster family on his release from the hospital.

{¶ 3} After a hearing on March 5, 2010, the trial court adjudicated B.H. as an abused, neglected and dependent child. At the hearing,¹ appellant entered an admission to the complaint and the court found that she used Xanax while pregnant and she did not have a prescription for the drug. The alleged father questioned paternity of the child and a paternity test was ordered. The court further found that appellant lived with her parents and had not recently worked due to the fact that her pregnancy with B.H. was a high-risk pregnancy. The court also determined that appellant had two other children who resided with their father. The court continued temporary custody with the agency.

{¶ 4} A case plan was prepared and filed by the agency that required appellant to address concerns regarding drug and alcohol abuse, address mental health concerns, obtain and maintain stable housing and some source of income, and complete parenting education. The father's paternity was established, but other than an initial request for visitation, the father had no further contact with the agency.

1. While Appellant provided a transcript of the permanent custody hearing on appeal, no transcript of the adjudication hearing was provided. While the factual and legal determinations from the adjudication are not issues in the appeal, review of the transcript is helpful on appeal in order to set a context for later hearings. The above facts are taken from the trial court's adjudication entry.

{¶ 5} On March 14, 2011, the agency moved for permanent custody of B.H. on the basis that the child had been in agency custody for 12 of 22 months and it was in the child's best interest to grant permanent custody to the agency. The complaint alleged that although the mother had made some progress on her case plan, the concerns that led to B.H.'s removal still existed and the child was in need of a legally secure placement.

{¶ 6} A hearing was held on the permanent custody motion on June 27, 2011. The agency caseworker testified that B.H. is doing well in the foster home and is bonded to the foster parents who have had him since birth. She stated that B.H.'s father had had little contact with the child. After paternity was established, the father indicated he would like visitation time, but never followed through with a request and since that time, he has had no further contact with the agency.

{¶ 7} The caseworker testified that appellant did the initial evaluation for drug and alcohol assessment, but she was not aware of any progress beyond the initial evaluation. With regards to the mental health evaluation, the caseworker testified that appellant attended a few counseling sessions. Appellant completed parenting class as required, but her only employment during the agency's involvement was from November 2010 to March 2011 when she worked at Frisch's. The caseworker discussed the various places where appellant lived and the time she spent at each location. The caseworker also indicated that appellant had positive drug screens during the pendency of the case, and no testing had been performed since January because the agency was unable to locate appellant due to her changing housing situation. The caseworker stated that the agency was requesting permanent custody because they had concerns at the beginning of the case which has continued, including the drug problems, along with an inability to maintain housing and employment.

{¶ 8} Appellant also testified at the hearing and stated she has been living with the father of her two older children for the past few weeks. She testified that her last counseling

session was in December 2010, and the counselors she was seeing as part of the mental health assessment told her she did not need to continue seeing them because she was doing well. She testified that she has applied for housing assistance in two different counties and was receiving food stamps. When questioned regarding her drug use during pregnancy, appellant stated that she took one Xanax shortly before B.H. was born.

{¶ 9} The foster father also testified that B.H. has been in the foster home since he was released from the hospital about five days after birth. The foster father discussed the foster home, the child's progress and the relationship between B.H. and the foster family.

{¶ 10} On September 9, 2011, the court issued a decision granting permanent custody of B.H. to the agency. Appellant now appeals the court's decision and although not captioned as assignments of error, raises two "issues" for review. We construe each of these "issues" as assignments of error. Because they are related, however, we address both assignments of error together.

{¶ 11} Appellant argues that the trial court abused its discretion by granting permanent custody to the agency. She also argues that the decision to grant permanent custody is against the manifest weight of the evidence.

{¶ 12} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶ 16 (7th Dist.). A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520 (12th

Dist.).

{¶ 13} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, 12th Dist. Nos. CA2009-10-139, CA2009-11-146, 2010-Ohio-1122, ¶ 22.

{¶ 14} In this case, the juvenile court found by clear and convincing evidence that B.H. had been in the temporary custody of Fayette County Department of Job and Family Services for more than 12 months of a consecutive 22-month period as of the date the agency filed the permanent custody motion and appellant does not dispute this finding. The court also found that granting permanent custody to the agency was in B.H.'s best interest. Appellant argues that the court's decision is an abuse of discretion and against the manifest weight of the evidence because she completed most of her case plan requirements.

{¶ 15} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, the court shall consider all relevant factors, including, but not limited to the following:

(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 * * *;

(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 divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 16} In considering these factors, the court found that B.H. is bonded to the foster parents and calls them "daddy" and "mama." The court found the foster parents have cared for B.H. since birth, including when the child screamed at night during his withdraw, and the foster parents have provided needed medical care for the child. The court further found that B.H. has had limited contact with appellant and does not refer to her by a name which indicates a relationship between them. Although visits were scheduled for two times a week, appellant missed several visits. The court found that appellant cited a lack of transportation as the reason for the missed visits, but did not present any evidence regarding efforts she made to secure transportation. Other placements were investigated by the agency, but were inappropriate or the parties were not interested in caring for the child. The court also found that B.H. has twin half-siblings living with their father in Columbus, but has never met them and has no relationship with them. The court concluded that the evidence was clear that the only meaningful relationship and interaction B.H. has experienced in his life is with the foster parents.

{¶ 17} The court found that B.H. was too young to express any wishes regarding custody. The guardian ad litem in the case recommended granting permanent custody to the agency.

{¶ 18} The juvenile court also determined that B.H. is totally dependent and in need

of a legally secure placement. The court found that appellant has lived nine places since B.H. was born and has been homeless for about three months. Appellant stayed in several of the places for short periods of time, and did not pay rent to the individuals with whom she stayed. At the time of the hearing, she was staying with the father of her twins and testified that she could stay there until she found a place to live. Appellant testified that she wants to stay in Washington Courthouse, and she is applying for subsidized housing in another county, that she may move back in with her mother and has not had a permanent address in the past year. The court concluded from this testimony that appellant "really has no plan."

{¶ 19} The court also found that appellant is unemployed and was last employed at Frisch's where she worked for four months. She has a degree in business management and office technology, but has not made any applications for employment in these fields since B.H. was born. She is in arrears on her child support order and other than a few small toys, has supplied nothing for the child's care.

{¶ 20} The court further found that appellant suffers from anxiety and depression, but testified she is not currently taking any medications. Appellant presented a brief letter at the hearing which indicated she completed counseling, but the court found the testimony confusing regarding when she ended counseling and the purpose of the counseling. The court also found that appellant has a history of drug and alcohol problems and several of her drug screens during the pendency of the case were positive. The last drug test, performed on October 6, 2010, was positive, and although appellant alleged that she had a prescription for the drug that appeared on the drug screen, she failed to provide evidence of the prescription to the agency. The caseworker testified that no more recent drug screens had been performed because the agency had difficulty locating appellant. The court found that although appellant testified that she has two cell phones, the guardian ad litem also indicated she had trouble contacting appellant.

{¶ 21} The testimony was uncontroverted that appellant completed parenting classes. The court found she was involved in a criminal altercation during the pendency of the case, although it did not involve a child victim. No charges were filed.

{¶ 22} The court concluded that appellant is totally dependent on others and has no means of self-support. The court determined that other than her four months of employment, she has no means of caring for herself, much less a totally dependent child. Finally, the court indicated that the child's father thought permanent custody would be good for the child.

{¶ 23} Based on a review of the factors in R.C. 2151.414(D)(1), the court determined by clear and convincing evidence that permanent custody was in B.H.'s best interest. Appellant's argument on appeal is essentially that she completed some of, and was making progress on, her case plan. However, the testimony presented at the hearing showed that overall, since the case began in February 2010, appellant made little progress in her ability to provide a safe and stable environment for the child. The child has been in foster care since birth and is in need of a legally secure placement which appellant is unable to provide. We find the trial court's decision is supported by sufficient evidence and is not against the manifest weight of the evidence. Appellant's assignments of error are overruled.

{¶ 24} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.