

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

In the Matter of: T.M. and S.R.

Court of Appeals Nos. L-10-1245
L-10-1246

Trial Court Nos. JC 10204755
JC 09195018

DECISION AND JUDGMENT

Decided: January 24, 2011

* * * * *

Stephen D. Long, for appellant.

Jill E. Wolff and Angela Y. Russell, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is a consolidated appeal from judgments of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellant mother and granted permanent custody of her children T.M. ("T.") and S.R. ("S.") to appellee Lucas County Children Services ("LCCS"). Mother filed a timely appeal from the trial court's judgments. Father filed a motion in this court for a delayed appeal, which this court denied on November 8, 2010. In our decision, we found that our holding that the

delayed appeal provisions of App.R. 5(A) do not apply to final judgments involving the termination of parental rights is in conflict with *In re Westfallen Children*, 5th Dist. No. 2006 CA 00196, 2006-Ohio-6717. Thereafter, this court certified the record to the Supreme Court of Ohio for final determination on the question of whether the delayed appeal provisions of App.R. 5 extend to cases involving the termination of parental rights and privileges. (Supreme Court case No. 2010-2093.) Accordingly, evidence before the trial court as to father is addressed in this appeal only as it relates to our review of mother's appeal.

{¶ 2} For the following reasons, the judgments of the trial court are affirmed with regard to the termination of mother's parental rights as to T.M. and S.R.¹

{¶ 3} Appellant ("mother") sets forth the following assignment of error:

{¶ 4} "The decision of the trial court to award the agency permanent custody was against the manifest weight of the evidence and not supported by sufficient evidence."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. Appellant and her children have been involved with LCCS since June 2009. At that time, the agency received referrals stating concerns of severe physical abuse of the two older siblings of S. and T., severe neglect, substance abuse by both parents, and domestic violence. On June 10, 2009, the agency filed a complaint in dependency, neglect and abuse regarding S., then 18 months old, and the two older siblings. (Case No.

¹The trial court conducted a single disposition hearing for T.M. and S.R. but issued separate judgment entries as to each child. Separate notices of appeal were filed and this court consolidated the appeals under 6th Dist. No. L-10-1245.

JC 09195018.) A shelter care hearing was held that same date and the trial court placed S. in the interim temporary custody of LCCS.² On July 27, 2009, after mother and father stipulated to certain facts relating to the children, S. was adjudicated a neglected child. Temporary custody of S. was awarded to the agency with case plan services directed toward reunification.

{¶ 6} On April 12, 2010, the agency filed a motion for permanent custody of S. As to mother, the agency alleged that she continued to use drugs, failed to regularly attend individual counseling as arranged, had not begun parenting classes as required by her case plan, and had an unstable housing situation. On May 6, 2010, three days after the birth of T., the agency filed an original "Complaint in Dependency: Permanent Custody" with regard to T. (Case No. JC 10204755.) The agency alleged that mother had tested positive for opiates on two occasions during her pregnancy with T. The agency further cited mother's failure to complete previous case plan services, concerns for the parents' lack of housing stability, and concerns regarding their financial ability to meet T.'s basic needs. At that time, the trial court awarded interim temporary custody of T. to the agency.

{¶ 7} On July 26, 2010, an adjudicatory hearing was held pertaining to T. At the close of the evidence, the trial court found that T. was a dependent and neglected child.

²The two older children, half-siblings of S. and T., were placed in the legal custody of their father, who is not the parent of either S. or T. That decision is not appealed herein.

The matter proceeded directly to disposition regarding both children. A review of the relevant evidence follows.

{¶ 8} During the adjudication and disposition phases of trial, the trial court heard testimony as to mother from Lloyd Letterman, with Rescue Inc., who conducted a mental health and substance abuse assessment of mother. Letterman diagnosed mother with "adjustment disorder with depressive mood" as well as cannabis abuse, and referred mother to Unison for substance abuse and mental health counseling in July 2009.

{¶ 9} Karrie Vebenstad, the family's LCCS caseworker since June 2009, testified that the agency's initial concerns centered on neglect, severe discipline of the older children, domestic violence, and substance abuse by mother and father. Both parents had a history of substance abuse and there was ongoing domestic violence between them. Additionally, the parents did not have suitable, stable housing. Services put in place for mother included alcohol and drug assessment, interactive parenting classes and domestic violence victims group counseling. Mother also was to work on obtaining suitable housing. Mother attended her diagnostic assessment and successfully completed outpatient treatment. During her treatment, however, mother tested positive one time for opiates; Vebenstad believed mother tested positive at least one other time. At the time of the final hearing, mother was not compliant with her mental health treatment and she stopped attending sessions approximately three months earlier.

{¶ 10} Vebenstad's concerns regarding domestic violence stemmed from mother's continuing relationship with father despite ongoing allegations of domestic violence

between the two parents. Vebenstad explained to mother that her continued relationship with father, in particular living with him, would hinder her ability to regain custody of her children. She further testified that she did not believe the children would be safe in the home if they were returned to their parents. Vebenstad testified that she did not believe either parent understood the agency's concerns regarding substance abuse, domestic violence, severe discipline and their transient lifestyle. Since the time the case was opened, mother had seven different addresses and continued to live with father until his incarceration in 2010. Vebenstad stated that on several occasions mother was untruthful about living with father.

{¶ 11} Mother had attended approximately half of her scheduled visitations with S. since the case opened. Mother did not visit the children between April 22 and July 1, 2010, and did not contact the agency to advise her caseworker that she would not be attending visitation. She later said she was bedridden following the birth of T., but failed to provide the agency with any documentation from her doctor to support her claim. When mother did attend visitations, she often ended the visits early. She did not participate in parenting classes as called for in her case plan.

{¶ 12} Vebenstad testified that S. is developmentally delayed in all areas, including fine and gross motor skills, speech, and walking, and at the time of the hearing was receiving appropriate therapy. Following evaluations by Help Me Grow and Early Intervention, the agency developed concerns regarding T.'s possible drug exposure in

utero. Vebenstad recommended that an award of permanent custody to LCCS would be in the best interest of both children with the goal of adoption.

{¶ 13} On August 16, 2010, the trial court filed a detailed judgment entry in which it ordered that the parental rights of both parents as to S. and T. be terminated and that permanent custody of both children be granted to Lucas County Children Services. It is from that judgment that mother appeals.

{¶ 14} In granting a motion for permanent custody, the trial court must find that one or more of the conditions listed in R.C. 2151.414(E) exist as to each of the child's parents. If, after considering all relevant evidence, the court determines by clear and convincing evidence that one or more of the conditions exists, 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. R.C. 2151.414(B)(1). Further, pursuant to R.C. 2151.414(D), a juvenile court must consider the best interest of the child by examining factors relevant to the case including, but not limited to, those set forth in paragraphs 1-5 of subsection (D). Only if these findings are supported by clear and convincing evidence can a juvenile court terminate the rights of a natural parent and award permanent custody of a child to a children services agency. *In re William S.* (1996), 75 Ohio St.3d 95. Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶ 15} The trial court in this case heard extensive testimony from the family's caseworker, mental health professionals, the children's guardian ad litem and mother. Testimony reflects that extensive case plan services were provided to mother from June 2009 until the time of the final hearing in July 2010. Mother completed domestic violence classes but did not appear to apply the lessons to her everyday life and decision-making, as she continued to live with father even though she acknowledged that father continued to verbally abuse her and try to control her. She failed to attend parenting classes and tested positive for cocaine and opiates during the pendency of the case. Mother was not attending counseling regularly, with some gaps in her attendance of at least a month. Mother's visitation with her children was sporadic at best and at times she ended the one-hour visits early. At the time of the hearing, the monthly rent for mother's apartment exceeded her income.

{¶ 16} The children's guardian ad litem submitted a report in which she recommended that the agency be granted permanent custody of the children. The guardian noted that the children were placed together and have responded well to their foster home. Additionally, the foster parents have indicated an interest in adopting both children.

{¶ 17} The trial court found, pursuant to R.C. 2151.414(E)(1), that LCCS made reasonable efforts to prevent the need for the removal of the children by offering case plan management, visitation, parenting classes, counseling referrals, substance abuse assessment and substance abuse treatment. The trial court also found that although

services were offered, the conditions that caused the initial removal of the children from the home have not been remedied and that the children cannot be returned to either parent within a reasonable period of time.

{¶ 18} Pursuant to R.C. 2151.414(E)(2), the trial court found that the parents have a drug abuse history which has not been addressed. The court further found that unresolved issues of substance abuse and mental health on the part of both parents make them unable to provide an adequate permanent home for the children at the present time and within one year after the date of the hearing.

{¶ 19} Pursuant to R.C. 2151.414(E)(4), the trial court further found that the parents had prioritized their relationship over the children's needs, continued to have an unstable housing situation and had failed to regularly visit the children.

{¶ 20} As to the matter of the children's best interest, the trial court found pursuant to R.C. 2151.414(D) that both children are in need of a legally secure permanent placement and that an award of permanent custody will facilitate an adoptive placement.

{¶ 21} This court has thoroughly reviewed the record of proceedings in this case, beginning with both parents' initial involvement with the agency in 2009, through the hearing on the motion for permanent custody and the trial court's decision. We find that the judgment in this case thoroughly addresses all of the relevant statutory factors as set forth in R.C. 2151.414(B) and (D) as well as R.C. 2151.414(E). Based on our review of the record as summarized above, we find that the trial court's decision was supported by clear and convincing evidence and was not against the manifest weight of the evidence.

We further find that an award of permanent custody to appellee is in the best interest of both children. Accordingly, mother's sole assignment of error is not well-taken.

{¶ 22} Upon consideration whereof, this court finds that the judgments of the Lucas County Court of Common Pleas, Juvenile Division, are affirmed as to the termination of appellant's parental rights as to T.M. and S.R. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENTS 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, P.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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