

[Cite as *In re I.H.*, 2011-Ohio-412.]

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

IN THE MATTER OF:	:	
I.H.	:	CASE NO. CA2010-07-157
	:	<u>OPINION</u>
	:	1/31/2011
	:	
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. JN2006-0592

Legal Aid Society, Tracy A. Washington, 10 Journal Square, 3rd Floor, Hamilton, Ohio 45011, for I.H.

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Billy W. Guinigundo, 5331 South Gilmore Road, Fairfield, Ohio 45014, for appellant

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POWELL, P.J.

{¶1} Appellant, the biological father of I.H., appeals a decision of the Butler County Juvenile Court granting permanent custody of the child to the Butler County

Department of Job and Family Services.

{¶2} On September 21, 2006, BCDJFS filed a complaint alleging that I.H. and his half-siblings, who have different fathers, were dependent children. The complaint alleged that the children were frequently truant and there were concerns regarding the mother's mental health and her lack of parenting skills regarding discipline, communication and budgeting. The complaint also alleged that the mother married a man she met through a prison hotline and a criminal background check of the man revealed convictions for domestic violence, menacing by stalking, failure to comply, violation of a protection order, resisting arrest and aggravated menacing or stalking. The complaint further alleged that the mother had revealed to a BCDJFS worker that she had been arrested for selling drugs in 2005, sex abuse of one of the children by an uncle was substantiated by the agency, the gas was not turned on in the family trailer, and there was no hot water to bathe and minimal food in the home. The complaint also alleged that the mother told a BSDJFS worker that appellant had been in prison from August 2005 to September 2006 for selling drugs and there were concerns that the mother was allowing appellant, a convicted sex offender, to return home after his release from prison.

{¶3} The children were placed in the temporary custody of the agency. In October 2006, the children were all placed in the home of the father of one of I.H.'s half-siblings, but custody of I.H. was returned to the agency in February 2007. On March 23, 2007, an agreement finding the children dependent was stipulated on the record and the court found the children dependent. Custody of I.H. remained with the agency. On December 10, 2008, the court found the mother was making progress on the case plan and the children were placed back with their mother. Six

months later, on June 17, 2009, the guardian ad litem filed a motion requesting that the court again grant temporary custody to the agency on the basis that the home was not safe physically, mentally or emotionally for the children. The motion alleged that reunification was unsuccessful and, among other things, there were concerns with discipline and cleanliness of the children, and the home was infested with fleas and bed bugs. The court granted the motion, again placing the children in the temporary custody of BCDJFS.

{¶14} On July 22, 2009, the agency filed a motion for permanent custody of the children. At the first scheduled date of the hearing, the mother executed a permanent surrender of her parental rights to the children. Appellant contested the motion for permanent custody and the hearing was continued to allow him to present additional witnesses. On May 11, 2010, the magistrate granted the motion for permanent custody. Appellant filed objections to the decision which were overruled by the trial court on June 17, 2010.

{¶15} Appellant now appeals the juvenile court's decision to grant permanent custody of the child to BCDJFS. He raises the following sole assignment of error for our review:

{¶16} "THE TRIAL COURT ERRED WHEN IT FOUND CLEAR AND CONVINCING EVIDENCE THAT A GRANT OF PERMANENT CUSTODY WAS IN THE CHILD'S BEST INTEREST."

{¶17} Before a natural parent's constitutionally protected liberty interest in the care and custody of his 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* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. 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. 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.

{¶8} 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.*, Warren App. Nos. CA2009-10-139 and CA2009-11-146, 2010-Ohio-1122, ¶22.

{¶9} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that the children are dependent, and have been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period as of the date BCDJFS filed the permanent custody motion. However, appellant does dispute the juvenile court's finding that granting permanent custody of the children to BCDJFS is in the children's best interest.

{¶10} 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 ending on or after March 18, 1999; (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."

{¶11} With respect to R.C. 2151.414 (D)(1)(a), the juvenile court found that due to appellant's multiple incarcerations he has had minimal contact with I.H. The court noted that the child is five and one-half years old and that appellant has missed approximately four years of his son's life due to repeated incarcerations in jail and prison. The court further found that appellant was released from prison on December 15, 2009, but due to a protection order in effect, he did not begin having visitations with I.H. until February 12, 2010. The visits have been supervised at Level One, the most stringent level of agency supervision and there have been no concerns voiced about appellant's interactions with his son during visits. Finally, the court found that the guardian ad litem reported the child is content in his foster home and is very bonded to the foster family.

{¶12} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that the guardian ad litem submitted a report indicating that I.H. wanted to live with his foster family and that he likes to visit with appellant. The guardian ad litem recommended that the child be placed in the permanent custody of the agency.

{¶13} With respect to R.C. 2151.414(D)(1)(c), the juvenile court found that the case had been pending since the agency filed a complaint on September 21, 2006. From the child's birth in August 2004 to September 2006, the child was in the custody of his mother. After that time, the court found that the child had "endured multiple placements," including with the agency, with his half-sibling's family, back in foster care, back to the temporary custody of his mother and again back in foster care. The court found that overall, I.H. was in the temporary custody of the agency for approximately 29 months during the case.

{¶14} With respect to R.C. 2151.414 (D)(1)(d), the juvenile court found that I.H. is in need of a legally secure placement as the case began in September 2006 and the child has been in foster care for approximately 29 months while the case was pending, in addition to spending three months with the parent of a half-sibling and approximately six months back in the mother's temporary custody. The court found that during this time, appellant had only minimal contact with I.H. and admitted that he has missed approximately four years of the child's five and one-half years of life.

{¶15} The court further found that on appellant's release from prison on December 15, 2009, he advised one of the caseworkers that he did not want to participate in case plan services, but just wanted to visit with I.H. However, the court also indicated that there was some evidence that appellant stated at a December 29, 2009 meeting that he would participate in services. One week before the hearing on

the permanent custody motion, appellant's attorney contacted the case worker and advised that appellant wanted to participate in services. Appellant completed a substance abuse assessment, but the report was not available by the last hearing date. In between hearing dates, appellant completed a domestic violence assessment, and it was recommended that he complete a Batterer's Intervention Group, which takes 24 weeks to complete.

{¶16} With regard to this factor, the court also found that appellant is a registered sex offender and has an extensive criminal history which includes convictions for corruption of a minor, contributing to the delinquency of a minor, aggravated trafficking in drugs and trafficking in drugs. Due to his recent incarcerations, appellant had no contact with I.H. from May 2008 until February 2010. The court further found that despite participating in a substance abuse program in prison, appellant admits to drinking alcohol. Appellant also does not have independent housing and is living with his ex-wife and her paramour. Appellant stated that he had employment doing roofing and siding, but did not present any evidence regarding the amount of income and whether it would be sufficient to meet the needs of a child. The court also found that appellant failed to take responsibility for the reasons that have caused I.H. to remain in foster care and placed the blame on the child's mother, disregarding the fact that his criminal behavior and incarceration contributed to the extended foster care placement.

{¶17} Based on these findings, the court concluded that appellant failed to establish that he can provide a stable environment for I.H. within a reasonable time. The court stated that although appellant completed substance abuse treatment, he still admits to using alcohol to fall asleep and the true test for a recovering addict is

the first year after release from a locked facility. The court stated that appellant also would have to participate in the batterer's intervention group for six months before his visitation with I.H. could even be liberalized. Finally, the court found that I.H. has endured multiple placements during his five years of life while appellant was incarcerated during most of the case. The court concluded that due to appellant's actions, or lack thereof, he abrogated his right to parent I.H. and it was not in the child's best interest to "gamble on the possibility that father may be able to demonstrate stability, remain substance abuse free and incur no other criminal charges over the next year."

{¶18} Finally, the court found that one of the factors in 2151.414(E)(7)-(11) apply to this case. The court found appellant abandoned the child since there were periods of time he failed to visit the child for more than 90 days and appellant had no contact with I.H. from May 2008 until February 12, 2010.

{¶19} Based on consideration of the above statutory factors, the court found that it was in I.H.'s best interest to be placed in the permanent custody of the agency. On appeal, appellant argues that there is a conflict in the evidence and the court lacked sufficient evidence to find that he was unable to provide a secure placement for the child. He argues that the court relied heavily on his time away from the child without giving due regard to his efforts at reunification and while incarcerated for treatment.

{¶20} We have carefully reviewed the record and find the court's findings are supported by sufficient, credible evidence. The court indicated that while appellant made some efforts in the right direction, given appellant's criminal history, lack of stability, absence from his child's life and substance abuse problems, the evidence

was not convincing to indicate that appellant would be able to provide a stable home for I.H. within a reasonable time. Considering the time that the child has been in various placements, the court found that waiting to determine if appellant would be able to provide a safe, stable home was not in the child's best interest. We find no error in the court's determination that granting permanent custody to the agency was in I.H.'s best interest. Appellant's assignment of error is overruled.

{¶21} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.