

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

IN THE MATTER OF:

H.J. and B.D.

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Appellate Case No. 2009-CA-45
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Trial Court Case No. N38976/N38977
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(Civil Appeal from Common Pleas
Court, Juvenile Division)
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OPINION

Rendered on the 20th day of November, 2009.

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FAIN, J.

{¶ 1} Appellant B.B. appeals from a judgment of the Juvenile Division of the Common Pleas Court of Greene County awarding permanent custody of her children, H.J. and B.D., to Greene County Children Services Board. B.B. contends that the judgment of the trial court is not supported by competent and credible evidence. Specifically, she contends that the trial court erroneously determined that:

- (1) the children could not be returned to her within a reasonable period of time; and
- (2) the agency had made reasonable efforts at reunification.

{¶ 2} We conclude that the judgment of the trial court is supported by the evidence. The evidence supports the determination that permanent custody is in the best interest of the children. Furthermore, given that the children were in the temporary custody of the agency for more than twelve months out of a consecutive twenty-two month period, the trial court was not required to determine whether the children could be reunited with their mother within a reasonable period of time. Finally, we conclude that the record demonstrates that the agency made reasonable and diligent efforts at reunification.

{¶ 3} The judgment of the trial court is Affirmed.

I

{¶ 4} B.B. is the natural mother of B.D. and H.J. Greene County Children's Services Board (the agency) became involved with the family in December, 2006 due to suspected substance abuse by B.B. By agreement, the children were placed in foster care.

{¶ 5} On February 2, 2007, the agency filed a complaint alleging that the children were neglected and dependent. Following a hearing held on April 6, 2007, the trial court determined the children were dependent and neglected. The agency submitted a case plan pursuant to which B.B. was required to submit to substance abuse and mental health assessments and to comply with any recommended treatment, to submit to random drug screens, to refrain from illegal drug use, to

obtain employment and stable housing, and to complete parenting classes. B.B. completed the assessments for substance abuse and mental health issues, and drug treatment was recommended. B.B. began group therapy for substance abuse. B.B. moved to Clinton County where she resided with her sister. She did not attend substance abuse therapy while there. In December 2007, B.B. moved to Highland County where she resided with her mother.

{¶ 6} On January 17, 2008, the agency filed a motion seeking an award of permanent custody. A hearing was held on April 8, 2008, at which time the agency and B.B. agreed to a First Extension of Temporary Custody.

{¶ 7} In August, the Xenia Police were dispatched to the parking lot of an apartment complex following a call regarding “unconscious subjects” in a van. B.B. was one of the individuals in the van, along with the father of one of the children herein. After several attempts were made to arouse B.B., she responded and was transported to the hospital. Following her stay in the hospital, B.B. told another individual that she had overdosed on Klonopin. At that time, B.B. was pregnant with another child who was subsequently removed from her custody by children’s services in Highland County.

{¶ 8} The agency filed another motion for permanent custody in September 2008. Hearings regarding permanent custody were held in December 2008, as well as March and April of 2009. Following the hearing, the trial court awarded permanent custody of the children to the agency. B.B. appeals.

II

{¶ 9} The First Assignment of Error states as follows:

{¶ 10} “THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN CONCLUDING BY CLEAR AND CONVINCING EVIDENCE THAT REUNIFICATION OF THE FAMILY WAS NOT POSSIBLE IN A REASONABLE LENGTH OF TIME.”

B.B. contends that the evidence does not support the trial court's finding that the children could not be returned to her within a reasonable period of time, and therefore the award of permanent custody to the Children Services Agency must be reversed.

{¶ 11} In a proceeding for the termination of parental rights, all of the court's findings must be supported by clear and convincing evidence. R.C. 2151.414(E). An appellate court will reverse a trial court's determination concerning parental rights and custody only when the decision is not supported by sufficient evidence to meet the clear and convincing standard of proof. “Clear and convincing evidence is that level of proof which would cause the trier of fact to develop a firm belief or conviction as to the facts sought to be proven.” *Miller v. Greene County Children's Services Board* (2005), 162 Ohio App.3d 416, 2005-Ohio-4035. The credibility of the witnesses and the weight to be given to their testimony were matters for the trial court, as the finder of fact, to resolve. *State v. Terry*, Darke App. No. 1730, 2008-Ohio-6738, at ¶ 46.

{¶ 12} Pursuant to R.C. 2151.414(B)(1)(d), a trial court shall terminate parental rights and grant permanent custody to the agency upon a finding that permanent custody is in a child's best interest and that the child has been in the custody of the agency for at least twelve of the preceding twenty-two months. Alternatively, R.C. 2151.414(B)(2) states that a trial court shall grant permanent

custody if it finds that permanent custody is in the child's best interest and that the child cannot be placed with a parent within a reasonable period of time or should not be placed with either parent because the parents have failed continuously and repeatedly to substantially remedy the conditions that caused the child to be removed from the home, despite reasonable case planning and diligent efforts to assist in reunification. Both of these provisions apply to the facts in this case.

{¶ 13} There is no dispute that the children were in the Agency's temporary custody for more than twelve months in a consecutive twenty-two month period. In these circumstances, the Agency is not required to prove that the child cannot be placed with a parent within a reasonable time or should not be placed with a parent. The only consideration is the child's best interests. In determining the best interests of a child, R.C. 2151.414(D) requires the court to consider all relevant factors when determining the best interest of the child, including, but not limited to: (1) the interaction and interrelationship of the child with the child's parents, relatives, foster parents and any other person who may significantly affect the child; (2) the wishes of the child; (3) the custodial history of the child; (4) the child's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; (5) whether any of the factors in R .C. 2151.414(E)(7) through (11) are applicable.

{¶ 14} Based upon our review of everything in the record on appeal, we conclude that the Agency presented clear and convincing evidence that an award of permanent custody to the Agency is in the best interest of the children. The children have lived with their foster parents since December 2006 – a period of over two

years at the time the hearings began on the issue of permanent custody. The evidence shows that the children are well-bonded with their foster family, and that they are doing well. The foster parents have indicated that they wish to adopt both children. While it appears that B.B. and the children are bonded, the record demonstrates that B.B. has ongoing substance abuse issues that have an adverse impact on her ability to interact with the children.

{¶ 15} The evidence also shows that the Guardian Ad Litem recommended that custody be awarded to the agency. The GAL noted that the children were too young to “articulate their wishes” regarding custody, but that they “have formed a strong bond” with their foster family. The GAL further noted that B.B. did not exercise visitation on a regular basis and had shown no concern about “providing a permanent, safe, stable home for the children.” Finally, the GAL stated that B.B. failed to “take [her] behavior and its effect on the children seriously.”

{¶ 16} During the course of this action, B.B. failed to submit to regular drug screening, as required by the case plan. Furthermore, some of the screening results were positive for drug use. Additionally, she experienced a drug overdose that led the police to have her transported to the hospital. B.B. also failed to attend drug and alcohol counseling as required by the case plan. Indeed, in her own appellate brief she admits that her attendance at treatment was “spotty and arguably erratic.” She did not obtain stable housing until shortly before the hearings on permanent custody began. While it appears that she was employed at some points during the pendency of this case, the record supports a finding that she had not obtained a job until shortly before the hearings, and that even then she was on maternity leave with

her third child. A review of this record indicates that B.B. failed to complete her case plan, and that she had not remedied the problems that led to the removal of the children. A psychological examination reveals that B.B. does not think she has a substance abuse problem. The psychologist who performed the exam testified that the children should not be returned to B.B. until she completes intensive counseling. The psychological exam indicates that B.B. will continue to abuse drugs due to her “poor insight” into her problem and because her tests reveal that she will revert to drug use once “the scrutiny from authority figures has ended.”

{¶ 17} We conclude that the trial court is correct in its determination that the “children need a legally secure permanent placement, which cannot be achieved without a grant of permanent custody to the agency.”

{¶ 18} The First Assignment of Error is overruled.

III

{¶ 19} The Second Assignment of Error is as follows:

{¶ 20} “THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN CONCLUDING THAT THE AGENCY (GREENE COUNTY CHILDREN’S SERVICES BOARD) HAD EXERCISED ‘REASONABLE CASE PLANNING AND DILIGENT EFFORTS’ IN ADDRESSING APPELLANT’S PROBLEMS.”

{¶ 21} B.B. contends that the trial court erroneously found that the Agency took appropriate steps to aid her in the goal of reunification with her children.

{¶ 22} In this case, the Agency must show that it made reasonable efforts to eliminate the reason for the continued removal. R.C. 2151.419(A)(1). The trial

court made a finding that the Agency made reasonable efforts to reunify the children with B.B. This is supported in the record.

{¶ 23} The Agency created a case plan designed to help B.B. regain custody. She was referred to evaluations and treatment. Indeed, even when B.B. moved to two different counties, the Agency stayed in contact with her, and assisted her in obtaining services near her residences. One case worker indicated that from June 2007 until August 2008, B.B. was doing well on her case plan, which prompted the Agency to agree to an extension of temporary custody. However, before reunification could be achieved, B.B. was hospitalized for a drug overdose. Thereafter, the Agency sought permanent custody.

{¶ 24} Based upon this record, we will not disturb the reasonable-efforts determination made by the trial court. The Second Assignment of Error is overruled.

IV

{¶ 25} Both of B.B.'s assignments of error having been overruled, the judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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