

[Cite as *In re W.B.*, 2015-Ohio-1197.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

W.B., V. AND H.B.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 2014AP100042 and
2014AP100043

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court
of Common Pleas, Juvenile Division Case
No. 13JN00304 and 14JN00183

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 26, 2015

APPEARANCES:

For Appellee

For Appellants

JEFF M. KIGGANS
Tuscarawas County Job/Family Services
389 16th Street, SW
New Philadelphia, Ohio 44663

JOHN A. GARTRELL
Assistant Public Defender
153 N. Broadway
New Philadelphia, Ohio 44663

Guardian ad Litem

GERRIT DEN HEIJER
222 W. Main St.
Ravenna, Ohio 44266

Hoffman, P.J.

{¶1} In Tusc. App. No. 14 AP 10 0042, Appellants William Bennett IV and Melissa Bennett (“Father” and “Mother”, individually; “Parents”, collectively) appeal the September 15, 2014 Judgment Entry entered by the Tuscarawas County Court of Common Pleas, Juvenile Division, which terminated their parental rights, privileges and responsibilities with respect to their minor son, and granted permanent custody of the boy to Appellee Tuscarawas County Job and Family Services (“TCJFS”). In Tusc. App. No. 14 AP 10 0043, Parents appeal a second September 15, 2014 Judgment Entry entered by the Tuscarawas County Court of Common Pleas, Juvenile Division, which terminated their parental rights, privileges and responsibilities with respect to their minor daughter, and granted permanent custody of the girl to TCJFS.

STATEMENT OF THE CASE AND FACTS

{¶2} Parents are the biological parents of W.B. (dob 12/11/2012) and H.B. (dob 6/25/2014). Father had previously lost permanent custody of a daughter in December, 2004. Mother had previously lost permanent custody of two daughters in December, 2011. On August 29, 2013, TCJFS filed a complaint, alleging W.B. was a dependent child and seeking temporary custody of the boy. Following a Juv. R. 6 hearing, the trial court placed W.B. in the temporary custody of TCJFS. Parents stipulated to a finding of dependency at the adjudicatory hearing on October 23, 2013.

{¶3} The trial court conducted a dispositional hearing on November 21, 2013, and approved and adopted Parents’ case plan. The trial court granted Parents supervised visitation with W.B. as acceptable to TCJFS.

{¶14} Mother gave birth to H.B. on June 25, 2014. The trial court issued an ex-parte order on June 30, 2014, authorizing TCJFS to take H.B. into protective custody pursuant to Juv. R. 13. On July 1, 2014, TCJFS filed a complaint, alleging H.B. was a dependent child and seeking temporary custody of the newborn. Following a Juv. R. 6 hearing, the trial court placed H.B. in the temporary custody of TCJFS. The trial court found H.B. to be a dependent child following an adjudicatory hearing on July 30, 2014. The trial court scheduled the disposition hearing on August 28, 2014. TCJFS requested permanent custody be the initial disposition with respect to H.B.

{¶15} On July 9, 2014, TCJFS filed a motion to modify prior disposition, seeking permanent custody of W.B. The trial court scheduled a hearing on the motion on August 28, 2014. The guardian ad litem for both children filed a report on August 25, 2014.

{¶16} The following evidence was presented at the hearing.

{¶17} Jaime Grunder, the ongoing case manager assigned to the family, testified Parents' case plans required them to obtain stable house and income, undergo psychological evaluations and follow any recommendations, complete parenting classes, and Father and Mother complete Melymbrosia and Harbor House programs, respectively. Grunder noted TCJFS had concerns due to the domestic violence in the home and the fact Parents had individually lost permanent custody of other children. Father had an extensive criminal history which included domestic violence and assault. Currently, four protection orders against Father were active. Father receives social security disability income. Parents have only had supervised one hour visitation with the children throughout the proceedings. Grunder did not express any concerns

regarding the visits. Parents have not accepted responsibility for their behaviors and blame others for their past and present circumstances. When speaking with Father, Grunder tried not to upset him because “he has explosive behaviors”.

{¶18} Grunder testified W.B. and H.B. are in the same foster home and are doing well. The foster family is interested in adopting the two children. W.B. and H.B. are bonded with their foster parents.

{¶19} Dr. Stephen Dean, a licensed psychologist with Melymbrosia Associates, conducted psychological assessments of both Father and Mother. When Dr. Dean discussed Father’s criminal convictions with him, Father did not accept responsibility for his behavior. Father stated his past convictions were based upon false allegations. He blamed others, explaining people were trying to make trouble for him or trying to irritate him. Dr. Dean noted he found Father’s explanations hard to believe given Father’s lengthy criminal record. Dr. Dean stated Father’s criminal history reveals he has difficulty regulating his emotions. Dr. Dean expressed concerns about Father’s ability to manage the frustrations of parenting in an appropriate manner.

{¶10} The results of the intellectual testing indicated Father’s overall reasoning abilities were in the extremely low range. Dr. Dean noted Father’s cognitive limitations would make it difficult for him to integrate information and he would need support in order to parent. Dr. Dean believed Father would be unable to independently parent. The results of the personality testing revealed Father tends to be negative and pessimistic. He believes other intend to harm him. Father does not have a positive self-image. He looks to others for help with decision making. Father’s lack of confidence and reliance on others causes him to struggle to be independent. Dr. Dean

testified the results of the violence scale showed Father was in the maximum risk range, and has the potential to be violent and aggressive. Father is unable to control himself when reacting to others.

{¶11} With respect to Mother, Dr. Dean testified Mother has difficulty understanding abstract information. For example, Mother believes because Father has not hurt her children, the children are safe. Mother is unable to recognize Father's violent behavior, in general, makes the children unsafe. Mother does not perceive Father as an aggressive person, and lacks awareness of his potential for being aggressive. According to Dr. Dean, Mother did not appear to have much of a support system. She had some tendency to be dependent. Dr. Dean explained individuals who are dependent tend to have feelings of inadequacy, worry about how they are perceived, and lack confidence. As a result, these individuals downplay difficulties in their lives. Mother has a tendency to tolerate significant discomfort.

{¶12} The results of the personality testing revealed Mother is inhibited, and will not acknowledge what is on her mind or how she is feeling. Mother anticipates her relationships will not work, which causes her to be guarded, defensive, and cautious. Mother felt she was not understood and not appreciated. Mother had a discrepancy in her ability to regulate her emotions. She tended to hold in her emotions, but would release them in a stronger manner than she would have if she expressed her feelings as she went along in her daily life.

{¶13} Dr. Dean commented, while he felt Mother needed to participate in the Harbor House program, he did not find the program sufficient to address her dependency issues. He recommended individual therapy to address her issues.

{¶14} In two separate judgment entries filed September 15, 2014, the trial court terminated Parents' parental rights, privileges, and responsibilities with respect to W.B. and H.B., and granted permanent custody of the children to TCJFS.

{¶15} It is from these judgment entries Parents appeal assigning the following as error:

{¶16} "I. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING PERMANENT CUSTODY TO JOB AND FAMILY SERVICES AS JOB AND FAMILY SERVICES FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE CHILDREN COULD NOT BE PLACED WITH PARENTS IN A REASONABLE AMOUNT OF TIME, AND THAT AN AWARD OF PERMANENT CUSTODY WAS IN THE CHILDREN'S BEST INTEREST."

{¶17} This case comes to us on the expedited calendar and shall be considered in compliance with App. R. 11.2(C).

I

{¶18} In their sole assignment of error, Parents contend the trial court abused its discretion in awarding permanent custody of their children to TCJFS as TCJFS failed to prove by clear and convincing evidence the children could not be placed with Parents in a reasonable amount of time, and that an award of permanent custody was in the children's best interest. We disagree.

{¶19} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon the filing of a motion for permanent custody

of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶20} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents; (b) the child is abandoned; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶21} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; and (4) 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.

{¶22} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶23} If the child is not abandoned or orphaned, the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶24} As set forth in our statement of the facts and case, supra, we find there was competent, credible evidence Parents failed to remedy the problems which caused the removal of the children from the home. Parents engaged in case plan services, however, both lacked any insight into the concerns which led to TCJFS's involvement, nor did they remedy the same. Neither Father nor Mother acknowledged Father's violent and aggressive behaviors.

{¶25} With respect to the best interest finding, the evidence revealed the children are doing well in foster care and the foster parents wish to adopt both of them.

{¶26} Based upon the foregoing, we find the trial court's findings the children could not be placed with Parents within a reasonable time, and an award of permanent custody was in the children's best interest were not against the manifest weight of the

evidence and were based upon sufficient evidence. We further find the trial court did not abuse its discretion in granting permanent custody to TCHFS.

{¶27} Parents' sole assignment of error is overruled.

{¶28} The judgment of the Tuscarawas County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur