

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE L.D., S.D., AND M.D.

: JUDGES:
:
: Hon. John W. Wise, P.J.
: Hon. Patricia A. Delaney, J.
: Hon. Craig R. Baldwin, J.
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: Case No. 2015CA00222
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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Family Court Division,
Case Nos. 2014JCV00349,
2014JCV00349A, 2014JCV00349B

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

May 23, 2016

APPEARANCES:

For Mother-Appellant:

VERNON M. INFANTINO
610 Market Ave. North
Canton, OH 44702

For SCDJFS-Appellee:

221 – 3rd Street SE
Canton, OH 44702

Delaney, J.

{¶1} This is an appeal from the November 19, 2015 judgment of the Stark County Court of Common Pleas, Family Division, awarding permanent custody of L.D., S.D., and M.D. to the Stark County Department of Job and Family Services (“SCDJFS”). On January 20, 2016, counsel for Mother advised this Court that counsel reviewed the record and could discern no meritorious issues to appeal. Pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, (1967), counsel thus requests to withdraw from the case. Mother’s counsel has suggested, however, that we independently review the record to determine whether any possible error exists. Counsel further suggests one potential assignment of error: whether Mother knowingly, intelligently, and voluntarily stipulated to granting permanent custody of her children to SCDJFS.

FACTS AND PROCEDURAL HISTORY

{¶2} Mother-Appellant is the mother of L.D. (born September 8, 2007), S.D. (born August 26, 2008), and M.D. (born April 11, 2013). Each child has a different father. The fathers did not appeal the decision to award permanent custody to SCDJFS.

{¶3} On April 7, 2014, SCDJFS filed a complaint alleging abuse, neglect, and dependency of the children and sought temporary custody. The trial court held an emergency shelter care hearing and Mother stipulated to probable cause. A guardian ad litem was appointed for the children.

{¶4} On June 11, 2014, SCDJFS amended its complaint to delete the language of neglect and abuse. Mother stipulated to the finding of dependency. The trial court found the children to be dependent. A case plan was approved and adopted.

{¶5} SCDJFS filed a motion to extend temporary custody of the children. The trial court granted the motion on March 3, 2015.

{¶6} Maternal grandmother filed a motion to intervene and a motion to change legal custody on August 11, 2015. Mother also filed a motion to change legal custody to the maternal grandmother, or in the alternative, to extend temporary custody. The trial court denied the motion to intervene. Father of L.D. filed a motion to change legal custody or in the alternative, to extend temporary custody.

{¶7} SCDJFS filed a motion for permanent custody on September 3, 2015. The trial was held on November 12, 2015. At trial, Mother and father of L.D. withdrew their motions to change legal custody.

{¶8} At the trial, Mother indicated she would stipulate to awarding permanent custody of the children to SCDJFS. The trial court conducted an inquiry of Mother to determine whether Mother voluntarily, knowingly, and intelligently stipulated to granting permanent custody of the three children to SCDJFS. (T. 7-10). Mother initialed and signed a three-page form entitled, "Parental Stipulation to Permanent Custody." The fathers of S.D. and L.D. also stipulated to granting permanent custody of the children to SCDJFS. The father of M.D. did not appear at the trial.

{¶9} The caseworker assigned to the children testified at the hearing. She testified the children have been in the custody of SCDJFS for greater than 12 months in a consecutive, 22-month period. (T. 14). She also testified that M.D.'s father had not been in contact with M.D. for more than 90 days. (T. 14). The children were placed with S.D.'s paternal grandfather, whom was interested in adopting the children. (T. 19).

{¶10} The trial court issued its findings of fact and conclusions of law on November 19, 2015. The trial court found Mother stipulated to the granting of permanent custody of the children to SCDJFS. The trial court found the children could not be placed with either parent within a reasonable time, nor should they be placed with either parent. The trial court finally held it was in the best interests of the children that permanent custody of the children be granted to SCDJFS.

{¶11} The judgment entry was journalized on November 19, 2015. It is from this judgment Mother now appeals.

ASSIGNMENT OF ERROR

{¶12} Mother raises one Assignment of Error:

{¶13} “APPELLANT DID NOT ENTER INTO A KNOWING, INTELLIGENT, AND VOLUNTARY STIPULATION REGARDING PERMANENT CUSTODY OF THE MINOR CHILDREN.”

ANALYSIS

{¶14} In *Anders*, the United States Supreme Court held if counsel, after a conscientious examination of the case, determines it to be wholly frivolous, counsel should so advise the court and request permission to withdraw. The request must be accompanied by a brief identifying anything in the record that could arguably support an appeal. Counsel must furnish his client with a copy of the brief and request the court to allow the client sufficient time to raise any matter that he or she chooses. Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings to determine if the appeal is indeed frivolous. If the appellate court determines the appeal is frivolous, it may grant counsel's request to

withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law requires.

{¶15} The procedures set out in *Anders, supra* are applicable to appeals involving the termination of parental rights. *In re B.F.*, 5th Dist. Licking No. 2009-CA-007, 2009-Ohio-2978, ¶¶ 2-3 citing *Morris v. Lucas County Children's Services Board*, 49 Ohio App.3d 86, 550 N.E.2d 980 (6th Dist.1989).

{¶16} This Court has held that a trial court must comply with Juv.R. 29(D) when accepting a parent's stipulation to permanent custody. See *In re S.D.*, 5th Dist. Stark No. 2014CA00119, 2014-Ohio-5124, ¶ 12. Juv.R. 29(D) provides:

The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

- (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
- (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

{¶17} The record in this case shows that the trial court conducted an inquiry as to whether Mother knowingly, voluntarily, and intelligently stipulated to awarding permanent custody to SCDJFS. (T. 7-10). Mother was also required to complete and sign a three-

page written stipulation to permanent custody. The trial court attached Mother's written stipulation to the judgment entry.

{¶18} There is nothing in the record to suggest that Mother did not voluntarily, knowingly, and intelligently relinquish her parental rights. Moreover, this Court's independent review of the record has failed to reveal any issues that would arguably support a reversal of the judgment of the trial court. Consequently, Mother's appeal is without merit and frivolous under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The request by Mother's attorney for permission to withdraw is granted.

CONCLUSION

{¶19} The judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed.

By: Delaney, J.,

Wise, P.J. and

Baldwin, J., concur.