

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

I.S.

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JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 2016CA00102

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Family Court Division, Case
No. 2014JCV01089

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

July 18, 2016

APPEARANCES:

For Appellant

DAVID L. SMITH
P.O. Box 20407
Canton, OH 44701

For Appellee

JAMES B. PHILLIPS
300 Market Avenue North
Canton, OH 44708

Farmer, P.J.

{¶1} On October 24, 2014, appellee, Stark County Department of Job and Family Services, filed a complaint alleging I.S., born October 22, 2014, to be a dependent child. Mother of the child is appellant, Shakyla Sorrells; father is unknown.

{¶2} Following an emergency shelter care hearing, the child was placed in appellee's emergency temporary custody.

{¶3} An adjudicatory hearing was held on January 21, 2015, wherein the trial court found the child to be dependent. The dispositional hearing followed and the trial court placed the child in appellee's temporary custody and a case plan was approved and adopted.

{¶4} On February 3, 2016, appellee filed a motion for permanent custody. A hearing was held on April 12, 2016. By judgment entry filed April 21, 2016, the trial court granted appellee permanent custody of the child. Findings of fact and conclusions of law were filed contemporaneously with the judgment entry.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶6} "THE TRIAL COURT'S JUDGMENT THAT THE MINOR CHILD CANNOT AND SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE PERIOD OF TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

II

{¶7} "THE TRIAL COURT'S JUDGMENT THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY GRANTING PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I, II

{¶8} Appellant claims the trial court's decision to grant permanent custody of the child to appellee was against the manifest weight and sufficiency of the evidence. Appellant claims the trial court erred in finding the child could not be placed with her within a reasonable period of time and the best interest of the child was best served by granting appellee permanent custody. We disagree.

{¶9} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries*, 5th Dist. Stark No. CA-5758, 1982 WL 2911 (February 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction*, 54 Ohio St.2d 279 (1978). On review for manifest weight, the standard in a civil case is identical to the standard in a criminal case: a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury [or finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction [decision] must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d

172, 175 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52; *Eastley v. Volkman*, 132 Ohio St .3d 328, 2012-Ohio-2179. In weighing the evidence, however, we are always mindful of the presumption in favor of the trial court's factual findings. *Eastley* at ¶ 21.

{¶10} R.C. 2151.419(A) provides in determining "reasonable efforts" by a public children services agency, "the child's health and safety shall be paramount." Subsection (A)(2)(e) states:

(2) If any of the following apply, the court shall make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home:

(e) The parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections.

{¶11} R.C. 2151.414(E) sets out the factors relevant to determining permanent custody. Said section states the following in pertinent part:

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, 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:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

(16) Any other factor the court considers relevant.

{¶12} R.C. 2151.414(B)(1) specifically states permanent custody may be granted if the trial court determines, by clear and convincing evidence, that it is in the best interest of the child and:

(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.

(d) 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***.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶13} Clear and convincing evidence is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. See also, *In re Adoption of Holcomb*, 18 Ohio St.3d 361 (1985). "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross* at 477.

{¶14} R.C. 2151.414(D)(1) sets forth the factors a trial court shall consider in determining the best interest of a child:

(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division(A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(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.

{¶15} Appellant does not contest the fact that the child was placed in appellee's temporary custody on October 27, 2014, adjudicated on January 21, 2015, and the

permanent custody hearing was held on April 12, 2016. T. at 5-6. As found by the trial court, the child has been in appellee's custody for over twelve months. R.C. 2151.414(B)(1)(d). It is appellant's position that she needs more time to become compliant with the case plan.

{¶16} The trial court heard testimony from the family's ongoing family service worker, Vicki Mitchell, the psychologist from Northeast Ohio Behavioral Health who evaluated appellant, Dr. Aimee Thomas, appellant's ongoing counselor from Northeast Ohio Behavioral Health, Denice McPherson, and appellant's instructor at Goodwill Parenting, Jennifer Fire.

{¶17} Appellant involuntarily lost permanent custody of five other children in Michigan over concerns of appellant's mental health and domestic violence issues between appellant and multiple boyfriends, the fathers of her children. T. at 8. Appellant's current case plan required her to submit to an assessment at Northeast Ohio Behavioral Health, participate in Goodwill Parenting, undergo individual counseling, remain medication compliant, and maintain gainful employment and appropriate housing. T. at 6-7.

{¶18} Appellant completed an assessment at Northeast Ohio Behavioral Health and was diagnosed with "major depressive disorder...borderline intellectual functioning and personality disorder not otherwise specified." T. at 6. Appellant initiated counseling services, but her attendance was "very sporadic and inconsistent over the course of the case plan." T. at 7. She was to attend a minimum of bi-weekly sessions. *Id.* Between June 2015 and February 2016, appellant attended nine sessions. *Id.*

{¶19} Appellant completed a Quest assessment, but treatment was not recommended "based on her self-report." T. at 9. She complied with random drug testing and tested negative. *Id.* Appellant attended Goodwill Parenting, but received a certificate of noncompliance because she did not meet any level of compliance throughout the program. *Id.*

{¶20} Ms. Mitchell testified she conducted home visits and at first the home was acceptable, and "then as time progressed um the conditions of the home continued to get you know worse and worse throughout the course of the case." T. at 10. Appellant "the majority of the case was extremely uncooperative. Every meeting she was very um very hostile very difficult to talk to. She refused to talk about anything that had anything to do with...with why we became involved in the first place." T. at 13. She failed to show for some Family Team meetings and when she did show up, she was very hostile and difficult to engage. *Id.* Appellant's visits with the child were mostly consistent, but her hostile and poor attitude affected her engagement and interaction with the child. T. at 14. Ms. Mitchell opined: "I believe that she has not demonstrate (sic) stability in a sense that she's not been honest with service providers um and therefore has been unable to um get the necessary treatment that she needs." T. at 15.

{¶21} Dr. Thomas evaluated appellant and determined "in terms of intelligence she's functioning within the below average range intellectual ability," and she suffers from "depressive disorder" as her depressive symptoms were pervasive "that occurred during her adolescence" and not situational. T. at 22-23. Dr. Thomas was concerned appellant's "attitude and irritability would interfere with her ability to successfully complete a case plan." T. at 23.

{¶22} Ms. McPherson counseled appellant over the course of a year, with appellant attending roughly half of the scheduled sessions. T. at 27-28. Appellant became more comfortable and engaged with Ms. McPherson, but when appellant met another counselor for recommended Intensive Child Parent therapy, she "shutdown" and was not able to apply what she had been working on. T. at 30-31.

{¶23} Ms. Fire testified when appellant attended Goodwill Parenting classes, she was "disengaged on a daily basis. Um abrasive...obstinate with staff...with her peers." T. at 36. During a scheduled home visit, the visit was "chaotic" and the home was "very dirty" and cluttered and smelled of urine and feces. T. at 38. There were many safety concerns and there "was not one safe appropriate place to put" the child down to play. T. at 39. Appellant acted "defensive...defiant...obstinate...angry." *Id.* During visits with the child, appellant had to be prompted to engage with the child and meet the child's developmental stages. T. at 40. Appellant did not meet minimal requirements and received a certificate of noncompliance which is very rare. T. at 41.

{¶24} There is no known father, as appellant "stated that she is unsure of the identity" of the father. T. at 4. A "John Doe publication" was perfected and no one contacted appellee claiming to be the father. *Id.*

{¶25} As for best interest, the child was placed in a foster-to-adopt home since birth and does not have any developmental issues. T. at 46, 48. The child has a strong bond with the foster mother. T. at 48. There does not appear to be a bond between appellant and the child, as appellant's engagement with the child is very limited. T. at 46, 48. There is also the possibility of a foster-to-adopt family in Michigan who have adopted appellant's other children, so the child could be kept with her siblings. T. at 48.

{¶26} "When granting permanent custody under R.C. 2151.414(B)(1)(d), the trial court need not find that the child cannot or should not be placed with either parent within a reasonable time since such a finding is implicit in the time frame provided in the statute." *In re Myers Children* 4th Dist. Athens No. 03CA23, 2004-Ohio-657, ¶ 10. We note "only one of the factors set forth in R.C. 2151.414(D) needs to be resolved in favor of the award of permanent custody in order for the court to terminate parental rights." *In re Z.T.* 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56. Nevertheless, the trial court found that the child could not be placed with appellant within a reasonable time nor should the child be placed with her.

{¶27} Upon review, we find sufficient clear and convincing evidence to support the trial court's decision in granting permanent custody of the child to appellee.

{¶28} Assignments of Error I and II are denied.

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

By Farmer, P.J.

Hoffman, J. and

Wise, J. concur.

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