

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: B.W.,

NEGLECTED/DEPENDENT CHILD

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Craig R. Baldwin, J.

Case No. 2016 AP 09 0045 and
2016 AP 09 0046

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court
of Common Pleas, Juvenile Division, Case
No. 15 JN 00203

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

February 1, 2017

APPEARANCES:

For Appellee

For Appellant - Mother

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Hoffman, J.

{¶1} In Tusc. App. No. 2016 AP 09 0045, Appellant Kayla Dreher (“Mother”) appeals the August 31, 2016 Judgment Entry entered by the Tuscarawas County Court of Common Pleas, Juvenile Division, which terminated her parental rights, privileges, and responsibilities, and granted permanent custody of her minor child to Appellee Tuscarawas County Job and Family Services (“TCJFS”). In Tusc. App. No. 2016 AP 09 0046, Appellant Brian Wease (“Father”) appeals the same with respect to the trial court’s termination of his parental rights, privileges, and responsibilities.

STATEMENT OF THE CASE AND FACTS

{¶2} Mother and Father are the biological parents of the minor child. On August 17, 2015, TCJFS filed a complaint, alleging the minor child was neglected and dependent. The complaint was filed due to Mother’s inability to maintain stable and safe housing, her extensive criminal history, and her drug abuse, as well as Father’s extensive criminal history which included 18 pending counts, and his drug abuse. TCJFS had previously been involved with Mother and she was under a Safety Plan. Father tested positive for amphetamines, cocaine, and heroin on May 6, 2015. Mother tested positive for opiates on May 14, 2015.

{¶3} The child was removed from Mother’s care on August 15, 2015, after Father was arrested at Mother’s residence. Mother lied to police about Father’s presence in the home. Mother was subsequently charged with obstructing official business and resisting arrest. She was serving a one year term of probation throughout the pendency of this action. Following an emergency shelter care hearing, the trial court awarded emergency

temporary custody of the child to SCJFS. The trial court appointed Attorney Donovan Hill as guardian ad litem.

{¶4} At an adjudicatory hearing on September 16, 2015, Mother stipulated to the complaint and the trial court found the child to be neglected and dependent. Father was served, but did not appear at the hearing as he was incarcerated. The trial court ruled no visitation or contact between Mother and the child. The trial court conducted a dispositional hearing on October 13, 2015, and ordered the status quo be maintained. The trial court denied Mother's request for visitation.

{¶5} On April 13, 2016, the paternal grandparents, Roy and Clarice Jane Wease (individually, "Grandfather" and "Grandmother", collectively, "Grandparents"), filed a Complaint for Custody. On April 19, 2016, TCJFS filed a Motion to Modify Disposition, seeking permanent custody of the child. The guardian ad litem filed a report on July 11, 2016. The trial court conducted a hearing on the motions on July 14, and August 5, 2016.

{¶6} The following evidence was adduced at the hearing.

{¶7} Jamie Grunder, the ongoing caseworker for the child, testified TCJFS had been working with the family since 2010. The agency had ongoing concerns about Parents' drug use. TCJFS learned Father was "on the run" and wanted on an active felony warrant. Further, Mother was not residing where she was supposed to be residing, but was living with Father.

{¶8} Grunder expressed concerns regarding Mother's "up and down" behavior. She explained sometimes they would be engaged in a good conversation and a minute later, Mother was yelling, very angry and upset, and making excuses. Grunder noted Mother always tried "to get away with something." Grunder sent Mother for a hair follicle

drug screen. Although Mother left Grunder's office in time to have the drug screen completed before the lab closed, Mother never presented at the lab. Grunder noted Mother repeatedly avoided her scheduled drug screens. Grunder stated the only aspect of her case plan Mother completed was her second attempt at parenting classes. Mother tested positive for morphine in October, 2015. Mother failed to maintain stable, independent housing. Mother lived back and forth between her mother's home and the home of her current boyfriend, Justin Penrod. Penrod had a criminal history and history of drug use. Mother informed Grunder she had secured housing and provided Grunder with an address. However, Mother then told the case worker the house was not ready and needed to be fixed.

{¶9} Grunder did not have any involvement with Father as he was incarcerated throughout the pendency of the action. Grunder indicated Father had an extensive and on-going criminal history which included theft, burglary, breaking and entering, domestic violence, and drug use.

{¶10} Grunder stated the child is in foster care and is doing very well. The child had completed kindergarten and was preparing for first grade in August. The child had some behavior problems when initially placed in foster care, but nothing significant or terrible. The child recently began to disclose information about Parents to her foster parents. The child was aware she could not live with Parents because they did drugs. The foster parents were willing to adopt the child if permanent custody was granted. The child gets along well with the other children in the foster home.

{¶11} With respect to Grandparents, Grunder testified TCJFS was involved with them in 1993, due to sex abuse allegations against Grandfather by Grandparents'

daughter, who was 16 years old at the time. Grandfather was ultimately convicted of one count of attempted sexual contact. Both Grandparents had alcohol problems. They each had DUIs on their records. Grunder and the guardian ad litem made an unannounced visit to Grandparents to evaluate the home. A large “Oxygen in use” sign was attached to the door. However, when Grunder and the guardian ad litem entered the home, “[t]here was a very, very strong smell of cigarette smoke” Tr. at 120. Grunder did not feel Grandparents’ home would be an appropriate placement for the child.

{¶12} Grandparents downplayed Father’s criminal activity, blaming his behavior on poor choices and the wrong crowd. Grandparents characterized Father as “a good kid” who would protect the child. Grandmother acknowledge Parents’ drug use in one breath, but, in the next breath, she stated she did not know if Parents were using drugs. Grandfather maintained a hands-off approach during Father’s involvement with the juvenile court when Father was a youth. Grandmother always attended juvenile court proceedings with Father, she had no ability to control Father’s behavior, and often made excuses for him. Grandmother was defensive about Father’s criminal history, and remained in denial.

{¶13} Brian Strawn, a substance abuse/chemical dependency counselor with Community Mental Healthcare, testified on Mother’s behalf. Strawn completed an assessment of Mother in March, 2016. Strawn did not speak with anyone at TCJFS regarding Mother. Strawn met with Mother on one occasion, however, prior to that meeting, Mother had completed the appropriate paperwork. Based upon what Mother reported to him, Strawn recommended no further treatment with his agency. Mother communicated to Strawn she was working through a twelve-step program and using daily

affirmations as a coping skill. Mother advised Strawn she had been sober since October, 2014.

{¶14} During his examination by the guardian ad litem, Strawn acknowledged he was unaware of the ongoing issues which led to the opening of the case by TCJFS. During his cross-examination, Strawn indicated Mother did not disclose any legal problems she had had in the past due to her drug use. Mother did not advise Strawn TCJFS had removed the child from her home. Mother told Strawn she was undergoing an intensive outpatient program at the Tuscarawas County Health Department, but she expressed concerns she was not getting adequate treatment through that program. Mother did not tell Strawn she had been terminated from the program due to her failure to attend. Mother also failed to disclose she had been placed in the Drug Court treatment program, but discharged from that due to non-compliance.

{¶15} Tiffany Barnhart, Mother's probation officer, testified Mother's compliance with the terms of her probation was marginal. Barnhart indicated Mother demonstrated some inconsistencies regarding her attendance at the intensive outpatient drug treatment program as well as her willingness to participate in treatment. Barnhart noted after the counselor at Community Mental Healthcare did not recommend treatment, Mother was scheduled to be reassessed by Alcohol and Addiction on July 7, 2016. Mother failed to appear for the scheduled evaluation.

{¶16} Via Judgment Entry filed August 31, 2016, the trial court terminated Mother and Father's parental rights, privileges, and responsibilities with respect to their minor child, and granted permanent custody of the child to TCJFS. The trial court found the

child cannot and should not be placed with Mother or Father within a reasonable time, it was in the child's best interest to be placed in the permanent custody of TCJFS.

{¶17} It is from the August 31, 2016 Judgment Entry Parents appeal.

{¶18} In Tusc. App. No.2016 AP 09 0045, Mother assigns the following as error:

{¶19} “I. THE TRIAL COURT ERRED IN AWARDING PERMANENT CUSTODY TO JOB AND FAMILY SERVICES AS SAID DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

{¶20} “II. THE TRIAL COURT ERRED IN AWARDING PERMANENT CUSTODY TO JOB AND FAMILY SERVICES WHEN THE EVIDENCE ESTABLISHED PLACEMENT WITH THE GRANDPARENTS WAS A REASONABLE OPTION AND IN THE BEST INTERESTS OF [THE MINOR CHILD].”

{¶21} In Tusc. App. No. 2016 AP 09 00346, Father raises the following assignment of error:

{¶22} “I. THE JUDGMENT OF THE TRIAL COURT THAT THE CHILD CANNOT AND SHOULD NOT BE PLACED WITH EITHER PARENT WITHIN A REASONABLE TIME WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

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

MOTHER

2016 AP 09 0045

I, II

FATHER

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I

{¶24} We elect to address all of Parents' assignments of error together.

{¶25} 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*, Stark App. No. CA5758 (Feb. 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 Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶26} 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.

{¶27} 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.

{¶28} 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.

{¶29} 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.

{¶30} 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.

{¶31} As set forth in our statement of the facts and case, supra, we find there was sufficient and substantial competent evidence Mother failed to remedy the problems which initially caused the removal of the child from her home. Mother failed to complete her case plan services. She did not undergo a psychological evaluation. Mother did not take her drug treatment seriously. She was terminated from an intensive outpatient program with Alcohol and Addiction due to her noncompliance. Her compliance with her probation had been marginal.

{¶32} Based upon the foregoing, we find the trial court's awarding permanent custody of the child to TCJFS was not against the manifest weight of the evidence and was supported by clear and convincing evidence. Mother's first assignment of error is overruled.

{¶33} We now turn to Mother's second assignment of error. Mother asserts the trial court erred in granting permanent custody of the child to TCJFS when the evidence

established placement with Grandparents was reasonable option and in the child's best interest. We disagree.

{¶34} The record reveals TCJFS was involved with Grandparents in 1993, due to sex abuse allegations against Grandfather by Grandparents' daughter, who was 16 at the time. Grandfather was ultimately convicted of attempted sexual contact. Grandparents both had alcohol problems. Grandfather and Grandmother have DUIs on their records. Grunder and the guardian ad litem made an unannounced visit to Grandparents to evaluate the home. A large "Oxygen in use" sign was attached to the door. However, when Grunder and the guardian ad litem entered the home, '[t]here was a very, very strong smell of cigarette smoke" Tr. at 120. Grandparents downplayed Father's criminal activity, blaming his behavior on poor choices and the wrong crowd. Grandparents characterized Father as "a good kid" who would protect the child. Grandmother acknowledge Parents' drug use in one breath, but, in the next breath, she stated she did not know if Parents were using drugs.

{¶35} Grandfather maintained a hands-off approach during Father's involvement with the juvenile court when Father was a youth. Grandmother always attended juvenile court proceedings with Father, she had no ability to control Father's behavior, and often made excuses for him. Grandmother was defensive about Father's criminal history, and remained in denial.

{¶36} Given Grandparents' personal involvement with TCJFS as well as Grandmother's inability to acknowledge Father's criminal behavior, we find the trial court did not err in determining placement with Grandparents would not be in the child's best interest. Mother's second assignment of error is overruled.

{¶37} In his sole assignment of error, Father contends the trial court failed to make sufficient findings as required by R.C. 2151.414(E). Specifically, Father submits the trial court “made no finding that one or more of the sixteen factors in R.C. 2151.414(E) existed as to Father.” Brief of Appellant Brian Wease at 6. Father notes, “[t]he only findings even remotely related to R.C. 2151.414(E) were: ‘2. [Child] was removed from her mother’s care on August 15, 2015 when [Father] was arrested at the home..., 3. In addition to this incident, [Father] and [Mother] have long criminal and drug histories’.” *Id.* at 6-7. Father adds the trial court made no findings as to the circumstances surrounding Father’s arrest, the nature of any conviction, or the length or location of Father’s incarceration. Father continues TCJFS admitted they had no involvement with Father.

{¶38} A trial court may base its decision a child cannot be placed with either parent within a reasonable time or should not be placed with either parent upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. *E.g., In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, 862 N.E.2d 816, ¶ 50; *In re William S.* (1996), 75 Ohio St.3d 95, 99, 661 N.E.2d 738.

{¶39} At the commencement of the July 14, 2016 hearing, the trial court noted, on the record, “[Father] is incarcerated and has never requested counsel, so he is unrepresented at this time.” Transcript of July 14, 2016 Proceeding at 1. Caseworker Jaime Grunder testified she had no involvement with Father as he was in prison at the commencement of the case and had remained incarcerated throughout the proceedings. Grunder discussed Father’s extensive criminal history, which included resisting arrest,

possession of drug paraphernalia, assault, domestic violence, aggravated robbery, theft, receiving stolen property, and having weapons under disability. Grunder indicated Father would be incarcerated for several years.

{¶40} While the trial court did not explicitly cite to any of the factors in R.C. 2151.414(E) relative to Father, the detailed findings in the August 31, 2016 judgment entry and the entire record in this matter make it apparent the trial court relied on several of the factors in R.C. 2151.414(E), including R.C. 2151.414(E)(1), failure to remedy conditions; R.C. 2151.414(E)(10), abandonment of the child; and R.C. 2151.414(E)(12), incarceration at time of filing of motion for permanent custody or dispositional hearing and unavailability to care for the child for at least eighteen months after the filing of motion for permanent custody or dispositional hearing.

{¶41} Further, in the absence of a proper request for findings of fact and conclusions of law, a trial court need not specifically set forth its findings regarding the R.C. 2151.414(E) factors. *In re C.S.*, 4th Dist. Athens No. 15CA18, 2015–Ohio–4883, ¶ 31. Because Father did not request findings of fact and conclusions of law, the trial court was not required to set forth a specific analysis of the R.C. 2151.414(E) factors.

{¶42} For the foregoing reasons, Father's sole assignment of error is overruled.

{¶43} The judgment of the Tuscarawas County Court of Common Pleas, Juvenile Division, is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Baldwin, J. concur