

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the matter of: Matthew R. A.,
Anthony C., Heather C., Brittany C.,
Steven M. C., Brianna A.

Court of Appeals No. L-04-1088
L-04-1104

Trial Court No. JC-02-108698

DECISION AND JUDGMENT ENTRY

Decided: December 3, 2004

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Howard C. Whitcomb III, for appellants.

Patricia L. Clark, for appellee.

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HANDWORK, P.J.

{¶ 1} This case is before the court on appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating the parental rights of appellants, Lisa C. and Steven C., and awarding permanent custody of their children to appellee, the Lucas County Children Services Board ("LCCSB").

{¶ 2} Lisa's minor children are Matthew A., Anthony C., Heather C., Brittany C., Steven M. C., and Brianna A. The whereabouts of the fathers of Matthew, Anthony, Heather, and Brittany are unknown and, although served by publication, they never

appeared in the proceedings below. However, they were represented by appointed counsel. Appellant, Steven C., is the father of Steven M. C. and Brianna.

{¶ 3} On September 30, 2002, LCCSB filed a complaint asserting that the six minor children in this case were abused and neglected. LCCSB alleged that Lisa was currently incarcerated in the Lucas County jail on a charge of loitering to solicit and that she admitted that her sole source of support was by means of prostitution. LCCSB also maintained that Lisa admitted that she has used "all drugs," including heroin. The agency further claimed that Lisa was diagnosed as suffering from depression at the age of 15 and attempted to commit suicide while in jail.

{¶ 4} In addition, the complaint stated that Lisa was homeless, and, while in Toledo, either lived with friends or at the Budget Inn Hotel. The complaint further stated that Steven C., who was living at the Budget Inn with the family, physically abused Lisa. According to LCCSB, Steven was also incarcerated at the time that the children services agency filed its complaint. LCCSB asked the juvenile court for an immediate emergency shelter care hearing, emergency custody of the six children, and an adjudication of dependency and neglect.

{¶ 5} On October 1, 2002, the trial court granted LCCSB's motion for an emergency shelter care custody and emergency custody. Subsequently, attorneys were appointed for all of the parties, and a guardian ad litem was appointed for the children. On November 25, 2002, a case plan for the children's parents was filed in the juvenile court. On January 8, 2003, the children were adjudicated dependent and neglected.

{¶ 6} On February 18, 2003, LCCSB filed a motion to show cause in which it asked the court to find Lisa in contempt for her failure to comply with a court order, as required under her case plan, to have a substance abuse assessment. On February 19, 2003, LCCSB filed a motion for permanent custody of Matthew, Anthony, Heather, Brittany, Steven M. C., and Brianna. The agency alleged that Lisa refused to comply with her case plan by (1) failing to have a substance abuse assessment or engage in substance abuse treatment; (2) failing to avail herself of offered mental health services; and (3) failing to obtain housing for herself and her children. A hearing on the motion for permanent custody motion was schedule for May 7, 2003.

{¶ 7} However, the children's guardian ad litem filed a report in which they indicated that Lisa was an inpatient at Compass and had been drug free for over a month. They recommended an extension of time for appellant to comply with her case plan. The hearing date was then moved to August 6, 2003.

{¶ 8} On July 24, 2003, LCCSB filed a motion to dismiss its request for permanent custody, but also asked the court for an order extending its temporary custody for another six months and to approve a new case plan that aimed at reunifying the children with their mother. The father of Steven M. C. and Brianna was still incarcerated. The trial court granted LCCSB's motion and approved the proposed case plan. The focus of Lisa's case plan was on her substance abuse, mental health, and her inability to find stable housing for herself and the children. The trial court granted the motion to dismiss and for continued temporary custody.

{¶ 9} On October 3, 2003, LCCSB filed a second motion for permanent custody of all six of Lisa's children. The complaint alleged that Lisa stopped participating in the services offered by LCCB and "has been in and out of jail for theft and prostitution." As to Steven C., he was also in jail as the result of a charge of assault. Again, the fathers of four of Lisa's children could not be located.

{¶ 10} The following facts were adduced at the hearing held on LCCSB's motion for permanent custody. At the time of the hearing, Steven C., who has an extensive criminal record, was in prison. He was serving the second year of a four year sentence. The record reveals that he never participated in any of the services offered by LCCSB. During the course of the proceedings below, the caseworker kept in contact with Steven C., provided him with a photograph of Steven M. C., and gave cards that he sent to his son to the child's foster parents.

{¶ 11} Houda Abdoney, Lisa's initial caseworker, testified that at the time that Lisa's children were removed from her custody, Lisa's chief problems were her substance abuse, her mental health, and her lack of housing. Lisa agreed to spend some time in the hospital in order to deal with her mental health problems. When she left the hospital, Lisa went to Fresh Attitudes, an inpatient facility that treats persons who have substance abuse problems. However, after only four days, she had a disagreement "with another person there" and left the program. From September 2002 to March 2003, Lisa's twice weekly visits with her children were sporadic, and, for one reason or another, Lisa either could not or would not meet with her caseworker at Abdoney's office.

{¶ 12} In March 2003, this case was transferred to Pamela Cannon, another caseworker at LCCSB. Because Lisa was living on the street for the month of March, Cannon had no contact with Lisa. In April, Cannon received word that Lisa was at Rescue Crisis. Lisa was subsequently transferred to Compass for inpatient treatment of her substance abuse. Cannon met with Lisa and discussed her case plan and the services being offered by LCCSB. Later, Lisa was transferred to Aurora House where she was accepted as a resident. During this period, Lisa continued to participate in the services offered by LCCSB. These services included individual and group counseling, counseling for women who were sexually abused as a child, and substance abuse treatment. Between April 2003 and August 2003, Lisa also regularly exercised her right to visit with her children.

{¶ 13} Based on Lisa's improved participation in the services offered under her case plan, LCCSB dismissed its motion for permanent custody. Shortly thereafter, Lisa was discharged from Aurora House for having a cigarette lighter and cigarettes in her possession. Lisa failed to notify Cannon of the fact that she was no longer residing at that facility. Moreover, she ended her participation in a substance abuse program at Compass, stopped visiting her children, and did not avail herself of the continuing services offered by LCCSB. Lisa also failed to find stable housing for herself and her children.

{¶ 14} In October 2003, Lisa was arrested and then released. In January 2004, she called Cannon from jail and asked Cannon to contact her (Lisa's) attorney. At the

time of the hearing on LCCSB's second motion for permanent custody, Lisa was still incarcerated and would not be released until October 2004.

{¶ 15} In his April 7, 2004 judgment entry, the juvenile court judge found, by clear and convincing evidence, that the parties' children could not be placed with any of their parents within a reasonable time or should not be placed with any of their parents. The court further determined that an award of permanent custody to LCCSB would be in the best interest of these children.

{¶ 16} Appellants appeal the lower court's judgment and assert the following assignments of error:

{¶ 17} "I. The trial court erred in finding that the Lucas County Children Services Board had made a reasonable effort to reunify the minor children with appellants.

{¶ 18} "II. The trial court erred in granting Lucas County Children Services Board's motion for permanent custody as it was against the manifest weight of the evidence to grant it."

{¶ 19} Prior to any consideration of appellants' assignments of error, we believe that it is necessary to set forth the standard that must be followed by a trial court in deciding a children services agency's motion for permanent custody.

{¶ 20} Before a juvenile court can terminate parental rights and award permanent custody to a public or private children services agency, it must find that clear and convincing evidence supports both portions of the permanent custody test set forth in R.C. 2151.414(B). Thus, as pertinent to the instant case, the court below was required to find that appellants' children cannot be placed with either of their parents within a

reasonable time or should not be placed with either of their parents, R.C.

2151.414(B)(1)(a).

{¶ 21} In reaching its determination of whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent, a court is guided by R.C. 2151.414(E). This statutory section sets forth 16 conditions that the court is required to employ in making its determination. It provides that if the trial court finds by clear and convincing evidence that any *one* of the 16 conditions exist, the court must enter the requisite finding. *In re R.H.*, 8th Dist. No. 84051, 2004 Ohio 5734, at ¶11.

{¶ 22} The juvenile court must also find that, pursuant to the factors set forth in R.C. 2151.414(D), clear and convincing evidence shows that permanent custody is in the best interest of the child. *In re William S.* (1996), 75 Ohio St.3d 95, 99. Clear and convincing evidence is that which will cause the trier of fact to develop a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶ 23} Initially, appellants' Assignment of Error No. I maintains that the trial court erred in finding, by clear and convincing evidence, that LCCSB complied with R.C. 2151.414(B) and R.C. 2151.414(E). Essentially, appellants argue that the court's judgment rests upon two erroneous findings made by the trial court. These are (1) that LCCSB made "diligent efforts" in aiding appellants in their efforts to substantially remedy the problems that initially caused their children's placement outside the home;

and (2) that appellants failed to substantially remedy the problems that caused the removal of their children from the home. We disagree.

{¶ 24} First, R.C. 2151.414(E)(1) is the only condition in the list of 16 that requires a children services agency to make diligent efforts to assist the parents of a child to "substantially" remedy the conditions causing the removal of the child from the home. In its judgment in the case sub judice, the juvenile court found that clear and convincing evidence demonstrated that not only the condition in R.C. 2151.414(E)(1) existed, but also that the conditions in R.C. 2151.414 (E)(4); 2151.414 (E)(12); and 2151.414 (E)(13) existed. Thus, even if we would assume that the trial court erred in making the disputed findings, we would not necessarily conclude that a finding that the children could not be placed with either of the appellants within a reasonable time or should not be placed with either of the appellants is in error.

{¶ 25} Second, clear and convincing evidence in the record of this case establishes that LCCSB formulated several case plans for Lisa and exercised diligence in aiding her to remedy the conditions that caused her children to be removed from her care. Services offered Lisa included substance abuse counseling, mental health services and diagnostic assessment, stable housing in Aurora House, therapy for the children, allowing regular visits with her children, and bus tokens for transportation. While Lisa initially availed herself of these services, she later returned to her former lifestyle and at the time of the permanent custody hearing was, once again, incarcerated.

{¶ 26} As to Steven C., case plans were devised and the caseworker kept in contact with him. However, notwithstanding any diligent efforts on the part of LCCSB,

his continued incarceration, which was the cause of the removal of his children from his care, precluded him from substantially remedying that condition. Therefore, we must conclude that the trial court did not err in making the contested findings.

{¶ 27} Appellants further argue under this assignment of error that clear and convincing evidence does not support a finding that it was in the best interest of these minor children to award permanent custody to LCCSB.

{¶ 28} In determining the best interest of the child in accordance with R.C. 2151.414(D), a trial court is required to consider all relevant factors including, but not limited to, the following:

{¶ 29} "(1) 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;

{¶ 30} "(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;

{¶ 31} "(3) 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 ending on or after March 18, 1999;

{¶ 32} "(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 to the agency;

{¶ 33} "(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶ 34} As applied to the present case, Cannon testified that appellants supplied her with the names of relatives who might take the children into their homes; however, when contacted, the relatives stated that they were unable to care for the children. Cannon's testimony also revealed the following facts relevant to the trial court's determination of the best interest of these minor children. All six children received counseling and some are still participating in counseling. Matthew and Anthony are placed in a foster home together. The other four children are placed in another foster home. The children like their foster homes and have expressed a desire to remain in those homes. All of the children, except Michael and Brianna, are attending school. Matthew and Heather receive good grades, Anthony is an average student, and Brittany has problems with reading, but has a tutor. Michael is attending preschool twice per week and enjoys the classes. Brianna is in an early intervention program to help her with her developmental delays. The foster parents of the children have expressed a desire to adopt them.

{¶ 35} Furthermore, the record discloses that, at the time of the hearing on the second motion for permanent custody, the children were in the temporary custody of LCCSB for almost two years. Additionally, there was very little interaction between Steven C. and Steven M. C. during this period. Even though Steven C. is the legal father of Brianna, the record contains no evidence indicating that he even tried to keep in contact with his daughter. Except for the period when she was an inpatient in

substance abuse facilities, Lisa also had very little interaction with her children. Finally, the guardian ad litem for the children recommended that it would be in the best interest of the children to award permanent custody to LCCSB.

{¶ 36} Based upon the testimony presented and the record of the case before us, clear and convincing evidence supports a finding that it was in the children's best interest to award permanent custody of the children to LCCSB. Accordingly, appellants' Assignment of Error No. I. is found not well-taken.

{¶ 37} In their Assignment of Error No. II, appellants contend that the trial court's judgment is against the manifest weight of the evidence. Appellants argue that they "actively engaged in the services provided to them" and that Lisa "substantially completed most of the case plan services required of her."

{¶ 38} To repeat, as set forth above, clear and convincing evidence is present in the record of this case to establish the existence of the condition provided in R.C. 2151.414(E)(1). Moreover, clear and convincing evidence was offered to show the existence of the other conditions cited by the juvenile court in finding that the children could not be placed with either of their parents within a reasonable time or should not be placed with either of their parents.

{¶ 39} Specifically, the evidence established that Lisa demonstrated a lack of commitment toward all of her children by failing to *regularly* support, visit or communicate with them when she was able to do so. See R.C. 2151.414(E)(4). Clear and convincing evidence also demonstrated that both appellants showed an unwillingness to provide an adequate permanent home for their children. *Id.*

{¶ 40} Furthermore, it is undisputed that Steven C. was incarcerated at the time the motion for permanent custody was filed and that he would not be available to care for his children "for at least 18 months after the filing of the motion for permanent custody * * *." See 2151.414(E)(12). Finally, the record offers clear and convincing evidence (including appellants' criminal records) of the fact that appellants were repeatedly incarcerated and that this repeated incarceration prevented them from providing care for their children. See R.C. 2151.414(E)(13). Accordingly, appellant's Assignment of Error No. II is found not well taken.

{¶ 41} On consideration whereof, this court finds that substantial justice was done the party complaining, and the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellants are ordered to pay the costs of this appeal. See App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE