

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

In the Matter of: R.T.

Court of Appeals No. L-10-1102

Trial Court No. JC 09200181

DECISION AND JUDGMENT

Decided: December 15, 2010

* * * * *

Angela Y. Russell, for appellee.

Dan M. Weiss, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, R.T., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating her parental rights to minor child R.T. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appellant's counsel has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, asserting that there are no meritorious issues for

appeal. This court has found that "the procedures enunciated in *Anders* are applicable to appeals involving the termination of parental rights." *In the Matter of R.B.*, 6th Dist. No. L-09-1274, 2010-Ohio-4710, ¶ 1, quoting *Morris v. Lucas Cty. Children Serv. Bd.* (1989), 49 Ohio App.3d 86, 87.

{¶ 3} In *Anders*, the United States Supreme Court held that where counsel, after a conscientious examination of a case, determines the case to be wholly frivolous, he or she should so advise the court and request permission to withdraw. *Anders*, 386 U.S. 738, 744. In the instant matter, counsel for appellant has filed with his request to withdraw a brief identifying something in the record that could support the appeal and, also, has furnished his client with a copy of the brief and the request to withdraw as required under *Anders*. *Id.* Appellant has not filed her own brief.

{¶ 4} Appellant's counsel raises the following potential assignment of error:

{¶ 5} I. "THE APPELLANT [sic] DID NOT MAKE REASONABLE EFFORTS TO PREVENT THE REMOVAL OF THE CHILD AND OFFER CASE PLAN SERVICES WITH A GOAL OF REUNIFICATION AND IMPROPERLY GRANTED PERMANENT CUSTODY TO APPELLEE."

{¶ 6} Minor child, R.T., was born in early December 2009. On December 8, 2009, appellee, Lucas County Children Services ("LCCS"), filed a complaint in dependency and neglect regarding the minor child. That same day, a shelter care hearing was held. Following the hearing, the trial court found that LCCS had made reasonable

efforts -- including substance abuse services and mental health services -- but that those efforts were insufficient to prevent removal. As a result of the trial court's findings, interim temporary custody of the child was awarded to appellee.

{¶ 7} On January 13, 2010, a pretrial hearing took place. Appellant did not appear at the hearing. When appellant's counsel was asked why appellant was not present, he answered that he did not know. He added that he had had no contact with appellant following the shelter care proceedings. The alleged father, Raymond Powell, was likewise absent. Counsel for Powell stated that she was unable to contact Powell and, for that reason, she moved to withdraw from his representation. The trial court found her request well-taken and granted her motion.

{¶ 8} On February 9, 2010, the trial court held a hearing addressing the matters of adjudication and disposition. Once again, neither appellant nor the alleged father, Powell, appeared for the proceeding.

{¶ 9} At the hearing, evidence of the following was presented to demonstrate that minor child, R.T., is a dependent and neglected child. LCCS assessment caseworker Monique Lang testified that when she met appellant, shortly after the child's birth, appellant had no provisions for the child, was homeless, and had a history of mental health issues, including bi-polar disorder and depression with psychosis. Lang further testified that appellant was not receiving any mental health treatment at the time of the child's removal.

{¶ 10} Lang also expressed concern regarding appellant's parenting abilities. Specifically, Lang remembered a visit with appellant that took place while appellant was still in the hospital. At that time, Lang observed that appellant did not pay attention to the child when the child was crying. Recalling a later visit between appellant and the child, Lang stated that she noticed appellant lie the baby on a couch and then walk away.

{¶ 11} Lang testified that although appellant was referred to services to address the mental health and substance abuse concerns, she never followed through with those services. Lang further testified that appellant also had not completed other, similar case plan services to which she was referred in a previous case.

{¶ 12} LCCS investigative caseworker Amy Koziarski testified regarding appellant's previous mental health history, lack of stability, and failure to follow through with previously recommended services in connection with an earlier referral that she had received in 2007.

{¶ 13} Following the testimony of the two aforementioned witnesses, the trial court found that appellee had met its burden of proof that the child was a dependent and neglected child.

{¶ 14} The case then proceeded to the dispositional portion of the hearing. LCCS caseworker Briana Ventimiglia testified that the agency initially became involved with appellant's family back in 2003, and that appellant had previously been given the opportunity to work on a case plan addressing mental health, substance abuse and

housing concerns, but that she never successfully completed any portion of that plan. With respect to the current case, Ventimiglia stated that appellant consistently missed appointments with her, and that appellant failed to avail herself of any recommended mental health services. Ventimiglia also testified that appellant has no independent, stable housing, and has failed to demonstrate the ability to provide a permanent home for the child. Regarding the alleged father, Ventimiglia testified that the agency was unable to locate him.

{¶ 15} According to Ventimiglia, adoption is the goal of the case plan in this case. She stated that the agency's recommendation for permanent custody is based upon appellant's history, her lack of housing, her mental health issues, and the fact that appellant has not successfully completed services in the past. She additionally testified that the child is doing well in her placement with a relative, and that the relative is interested in adopting her.

{¶ 16} LCCS caseworker Vincent Owens testified that he was appellant's caseworker in a previous case, from August 2008 until August 2009, and that his case involved appellant and appellant's minor son, J.T. Owens testified that the issues that caused appellant's family to come to the attention of LCCS in his case included appellant's previous history involving alleged substance abuse, parenting problems, and mental health difficulties. In addition, there were issues concerning appellant being a transient and lacking housing. Owens stated that he had an opportunity to work a case

plan with appellant that had a goal of reunification. The case plan services included mental health assessment, substance abuse assessment, acquisition of stable housing, and parenting classes. According to Owens, although appellant did complete a single assessment that referred her to mental health services at Unison, she never successfully completed the recommended mental health services.

{¶ 17} Owens described appellant's participation in the services as "sporadic," despite his efforts to engage her. Specifically, Owens stated: "[Appellant] denied the need to take medication, and she would make appointments and miss them. I, myself, had made several appointments with her, and she would miss them and not follow through with services or recommendations. * * * [P]hysically I would come to her home and arrange to pick her up or take her or make appointments for her, but she really didn't make herself available."

{¶ 18} Owens testified that during his involvement with appellant, appellant's housing situation was always unstable, as she moved in and out of different homes and shelters. On two occasions, appellant was able to secure her own housing, but she "never stayed a day in either one of them."

{¶ 19} Owens testified that his last face-to-face contact with appellant was in June 2009, while appellant was incarcerated in the Lucas County Jail. In March 2009, appellant was incarcerated for stabbing her sister's boyfriend. Appellant reported that the incident with her sister's boyfriend erupted following an argument regarding the loss of

her children (of which there were a total of seven, at the time), over all of whom she had lost custody.

{¶ 20} In the summer of 2009, legal custody of appellant's second-youngest child, J.T., was transferred to a relative after appellant's failure to complete case plan services.

{¶ 21} According to caseworker Monique Lang, appellant, immediately following her release from jail and before R.T.'s birth, resided in a shelter; but by the time R.T. was born, appellant refused to stay in a shelter and had no other plans to address her housing problem.

{¶ 22} Investigative caseworker Koziarski testified that she first came into contact with appellant in the summer of 2007, at which time appellant was hospitalized in the psychiatric unit of St. Charles Hospital, as a result of her mental health issues.

Koziarski's next contact with appellant occurred in August 2008, at which time appellant was again hospitalized in the psychiatric unit, this time about three weeks before the birth of her seventh child. Following this hospitalization, appellant was supposed to be released to a group home and return to drug and alcohol treatment, but she failed to follow through on any of those recommendations.

{¶ 23} Amy Stoner, the guardian ad litem in this case, testified that she had known appellant since 2008 and that, pursuant to her investigation in the current case, she agreed with the recommendation for permanent custody, and that an award of permanent custody was in the best interest of R.T. Her reasons for this recommendation included appellant's

ongoing mental health issues and the fact that appellant has a history of failing to address those issues through mental health treatment. According to Stoner, the child needs stability and permanency, which an award of permanent custody would facilitate.

{¶ 24} At the conclusion of the February 9, 2010 hearing, the court awarded permanent custody of R.T. to LCCS. This court, having reviewed the entire record, must now proceed to determine whether any arguable issues exist for appeal. See *Anders*, supra, at 744.

{¶ 25} The trial court found R.T. dependent and neglected by clear and convincing evidence. R.C. 2151.414 establishes that a parent's rights may not be terminated unless the court finds evidence that (1) the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and (2) that a grant of permanent custody of a child to a children's service agency is in the child's best interest. Regarding the first requirement, R.C. 2151.414(E) sets forth criteria for determining whether a child cannot or should not be placed with a parent. In the case of R.T., the court made several findings supporting the conclusion that she could not or should not be placed with her parents. Citing subsection (E)(1), the trial court found that appellant, despite reasonable case planning and diligent efforts by the agency to assist her, failed to remedy the problems that gave rise to R.T.'s removal in the first place. Next, pursuant to subsection (E)(2), the trial court found that appellant suffers from a chronic mental illness that is so severe that it makes appellant unable to provide an adequate home. Citing

subsection (E)(4), the trial court found that both appellant and Raymond Powell have demonstrated a lack of commitment toward the child. Finally, under subsection (E)(16), the trial court found that: (1) neither appellant nor the alleged father appeared for the February 9, 2010 hearing; (2) the alleged father's whereabouts have been unknown since December 2009; and (3) appellant has seven other children, over each one of whom she has lost legal or temporary custody, with none of those children in her care.

{¶ 26} R.C. 2151.414(D) establishes the standard for determining whether the granting of permanent custody would be in the child's best interest. Here, the court found, pursuant to subsection (D)(1)(a), that it would be in the best interest of R.T. to grant permanent custody to the agency, as opposed to any other placement or custody arrangement. The court further found that R.T. is doing well in her current placement and that her needs are being met. In addition, the court found, pursuant to subsection (D)(1)(d), that the actions of the parents demonstrate that R.T. is in need of a legally secure permanent placement that can only be achieved by an award of permanent custody to LCCS. Finally, the court found that it would be contrary to R.T.'s welfare to return her to the family home due to: (1) the failure of appellant to complete any case plan services; (2) the alleged father's failure to establish paternity; and (3) the lack of evidence that either parent has appropriate and suitable housing.

{¶ 27} Where, as here, the record contains competent, credible evidence by which the trial court could have formed a firm belief or conviction that the essential statutory

elements for a termination of parental rights have been established, the findings of the trial court will not be overturned as against the manifest weight of the evidence. *In re S.* (1995), 102 Ohio App.3d 338, 344-345. After the shelter care hearing, appellant failed to appear for any of the hearings relevant to R.T.'s custody. Appellant has a history of chronic mental illness and housing difficulties that predated R.T.'s birth, and continues to this day, without any attempt by appellant to remedy these situations. These are the same issues that previously caused appellant to lose custody of her other seven children. At the time of the trial, both appellant's and the alleged father's whereabouts were unknown. Appellant's own counsel stated that he had not had contact with appellant since the day after the shelter care hearing. The trial court properly found that R.T. cannot and should not be placed with appellant within a reasonable time, and that an award of permanent custody to LCCS is in the child's best interest.

{¶ 28} Appellant alleges that LCCS did not make a sufficient effort to avoid permanent removal of R.T. and that case plan services should have been offered to appellant with the goal of reunification with the child.

{¶ 29} The evidence in this case shows that appellant failed to appear at any proceedings after the shelter care hearing, despite the fact that she was properly served. LCCS caseworkers and appellant's own counsel all made several attempts to contact appellant to involve her in this case, each without success. Although services were recommended to address appellant's chronic mental health, substance abuse, and housing

issues -- both in this case and in previous matters -- appellant failed to complete any of them, suggesting that she has done nothing to remedy those issues.

{¶ 30} In addition, R.C. 2151.419(A)(2) provides requirements for determining whether an agency made reasonable efforts to prevent removal of a child from the home. The statute lists five circumstances under any one of which the court must determine that the agency was not required to make reasonable efforts to prevent the removal of the child. In the instant case, subsection (A)(2)(e) applies, as appellant had already had her parental rights involuntarily terminated with respect to J.T.

{¶ 31} Finally, we note that it was not necessary for LCCS to offer a case plan with a goal of reunification in this case, for the simple reason that LCCS filed for original permanent custody. See *In the Matter of R.B.*, supra, at ¶ 24 (holding that a reunification case plan is not necessary where a child services agency seeks original permanent custody of a child).

{¶ 32} Based upon the evidence set forth in the record, we find that LCCS had no duty to make reasonable efforts to prevent the removal of R.T. or offer case plan services with the goal of reunification. We further find that the decision of the trial court to grant permanent custody of R.T. to LCCS was supported by clear and convincing evidence. Accordingly, appellant's potential assignment of error is found not well-taken.

{¶ 33} Upon our own independent review of the record, we find no other grounds for a meritorious appeal. Thus, appellant's appeal is found to be without merit and is

wholly frivolous. The motion to withdraw that was filed by counsel for appellant is well-taken and hereby granted.

{¶ 34} For the foregoing reasons, the judgment from the Lucas County Court of Common Pleas, Juvenile Division, terminating appellant's parental rights to R.T. is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
