

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

In re D.A.

Court of Appeals No. L-12-1062

Trial Court No. JC 11212002

DECISION AND JUDGMENT

Decided: August 3, 2012

* * * * *

Stephen D. Long, for appellants D.A. and M.Y.

Angela Y. Russell, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, Juvenile Division, which terminated appellants' parental rights to custody of their minor child. Because we conclude that the trial court did not make the finding argued in appellants' assignment of error, and was not required to make such finding, we affirm.

{¶ 2} Appellants are the biological father and mother of D.A., born in 2010. Appellee, Lucas County Children Services (“LCCS”) was awarded emergency temporary custody of D.A. on February 11, 2012, pursuant to a complaint alleging dependency and neglect. On July 13, 2011, the juvenile court adjudicated D.A. to be dependent and neglected, and continued temporary custody with LCCS. A case plan was implemented with the goal of reunification with the parents.

{¶ 3} On October 20, 2011, LCCS filed a motion for permanent custody of D.A. After conducting hearings on January 24 and 30, 2011, the court terminated appellants’ parental rights and awarded permanent custody of D.A. to LCCS in a judgment entry filed on February 15, 2012. The trial court found by clear and convincing evidence that, pursuant to R.C. 2151.414(B)(1) and 2151.414(E)(1), (2), (4), (11), (13), and (16), “the minor child cannot be placed and should not be placed with either parents within a reasonable time.” The trial court further found, by clear and convincing evidence, that, “pursuant to R.C. 2151.414(D)(1)(a-e), an award of permanent custody to LCCS is in the child’s best interest.”

{¶ 4} Appellants now appeal from that judgment, arguing the following sole assignment of error:

The trial court’s finding with regard to R.C. §2151.414(B)(1) is against the manifest weight of the evidence of the evidence as D.A. was not in the custody of the Lucas County Children Services Board for more than twelve months at the time the trial on the motion for permanent custody.

{¶ 5} R.C. 2151.414(B)(1) provides, in pertinent part, that:

(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, *has not 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 has not 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 if, 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, 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. (Emphasis added.)

{¶ 6} In this case, the trial court did not make any specific finding that the child had been in the temporary custody of the agency for twelve or more months of a consecutive twenty-two month period. Rather, the trial court merely stated that the child

had been in temporary custody of LCCS since February 2011. R.C. 2151.414(B) (1)(a) permits the grant of permanent custody even when a child has not been in temporary custody for twelve months. Therefore, appellants' argument is wholly without merit.

{¶ 7} Moreover, the trial court found six other applicable factors under R.C. 2151.414(E) supporting a finding that permanent custody to LCCS was in the child's best interest. In its decision, the trial court carefully and thoroughly outlined the unsuccessful attempts by appellants to refrain from domestic violence and substance abuse. Father has a lengthy history of mental health illness and chemical dependency. After D.A.'s removal, he continued to have substance abuse and cocaine use issues, was diagnosed with bipolar disorder but did not attend mental health services. He was convicted in September 2011 of domestic violence against mother and another woman in the home.

{¶ 8} Mother was diagnosed with bipolar disorder, attention deficit hyperactivity disorder, and borderline personality disorder, but was inconsistent in taking her prescribed medications. After D.A. was removed from the home, mother continued to test positive for opiates and cocaine. She had a history of arrests and criminal activity, including several violent assaults against father and others in the community, and continued to live with father, despite the domestic violence issues. Finally, mother had her parental rights terminated to two other children in 2004 and 2005 in Michigan. Appellants do not address nor dispute those findings. Consequently, the trial court committed no error which was prejudicial to appellants.

{¶ 9} Accordingly, appellants' sole assignment of error is not well-taken.

{¶ 10} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellants are 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, P.J.

CONCUR.

JUDGE

<p>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.</p>
