[Cite as *In re A.B.*, 2012-Ohio-4632.]

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

In re A.B., Z.B., B.B., L.B.

Court of Appeals Nos. L-12-1069
L-12-1081

Trial Court No. JC 10208598

DECISION AND JUDGMENT

Decided: October 5, 2012

* * * * *

Laurel A. Kendall, for appellants.

Jeremy G. Young, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Court of Common Pleas, Juvenile Division, terminating appellants' parental rights and granting permanent custody of the minor children, A.B., Z.B., B.B., and L.B., to appellee, Lucas County Children Services ("LCCS"). For the reasons that follow, we affirm.

{¶ 2} Appellant, M.B., is the biological father of A.B., born in 2005, Z.B., born in 2006, and B.B., born in 2007. Appellant, J.J., is the biological father of L.B., born in

2008. Appellant, A.J., is the biological mother of all four children. She has been married to M.B. and is currently married to J.J.

{¶ 3} On October 5, 2010, LCCS filed a complaint alleging dependency and neglect of the four children. Following an adjudication hearing, a magistrate found the children to be neglected and dependent and awarded LCCS temporary custody of the children. On December 2, 2010, the court adopted the magistrate's decision. On July 14, 2011, LCCS filed a motion for permanent custody of the children. The motion was granted on March 12, 2012. Appellants now appeal, setting forth the following assignments of error:

I. The court's grant of permanent custody to Lucas County Children Services was against the manifest weight of the evidence.

II. The trial court erred by finding that Lucas County Children Services had made reasonable efforts to reunify the family.

III. The court failed to utilize the least restrictive placement for the children when they denied legal custody to maternal grandmother B.W.

{¶ 4} At trial, LCCS caseworker Levarine Graham testified that she first became involved with the parties in June 2010. LCCS had become involved in 2009 because of repeated incidents of domestic violence among all three appellants. At that time, mother and the children lived with M.B. Conflicts arose between the appellants because of mother's ongoing relationship with J.J. At various times, protection orders were issued between mother and M.B., mother and J.J., and M.B. and J.J. There is a history of arrests

and jail time arising out of the appellants' relationship. Because of the domestic violence incidents, a safety plan was enacted which required both fathers to stay out of mother's home when she was there with the children. Upon learning from the children that M.B. had been visiting the home when mother was there with the children, LCCS established another safety plan for the children which resulted in their transfer to the home of their maternal grandmother. Under the new safety plan, mother agreed to help grandmother out financially and to transport the children to any appointments they may have.

{¶ 5} The children lived with their grandmother for a brief time. It was only after maternal grandmother determined that the children were too much to handle that LCCS was awarded temporary custody of them. In 2011, M.B. was incarcerated for domestic violence. Within a few days, mother had J.J. move in with her. Mother soon had J.J. arrested for domestic violence and divorced M.B. M.B. moved back in with mother after he was released from jail. Later that same year, mother married J.J.

{¶ 6} Graham testified that a case plan was created for mother that entailed mental health treatment for bipolar disorder and post-traumatic stress syndrome, parenting classes, and domestic violence counseling. She was also instructed to obtain stable housing as her living situation was inconsistent. Specifically, mother frequently moved around between the homes of both fathers and maternal grandmother. Graham testified that mother did not complete her mental health or domestic violence services. She did complete her parenting classes but she failed to stabilize her housing situation.

{¶ 7} Graham testified that a case plan was created for M.B. that entailed mental health treatment for mild depression, parenting classes, and domestic violence counseling. He was also instructed to obtain stable housing. Graham testified that M.B. completed his parenting classes and his domestic violence program. He did not, however, complete his mental health services. He claimed to have obtained stable housing but has yet to provide LCCS with an address.

{¶ 8} Graham testified that J.J.'s case plan was similar to M.B.'s. J.J. failed to complete his mental health services for his bipolar disorder, his domestic violence counseling and his parenting classes.

{¶ 9} With regard to the children, Graham testified that A.B., a first grader, suffers from epilepsy and a development disorder. His speech is delayed. She testified that he is doing well in his foster home but that he struggles in school. Graham testified that Z.B. has explosive temper tantrums for which he is receiving treatment. As for B.B, a preschooler, he appears to be developing well. She noted that the children have expressed to her that they want a permanent home.

{¶ 10} Finally, Graham testified that in her opinion, it would be in the best interest of the children for LCCS to receive permanent custody of them. She cited the domestic violence incidents, the overall unhealthy relationships between appellants, relationships that have continued throughout LCCS's involvement, and the need for a stable home for the children.

{¶ 11} The guardian ad litem ("GAL") for the children agreed with Graham's recommendation for permanent custody. She testified that all of the children exhibit high energy, have special needs and require lots of attention. When she asked each parent what they thought the children needed and how those needs would be addressed, none of the parents could tell her. She noted that none of the parents had a stable home at this time and she felt that the children had been damaged enough by moving from house to house with mother. She acknowledged that all three parents cared about the children. However, she did not believe that any of the parents were capable of constructively focusing on the children because they all three were too focused on their volatile "romantic" triangle. To illustrate her point, the GAL testified that only two days ago, M.B. followed mother and J.J. to a motel, vandalized mother's truck and proceeded to send threatening text messages to the couple.

{¶ 12} A trial court's determination in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Andy-Jones*, 10th Dist. No. 03AP-1167, 2004-Ohio-3312, ¶ 28. The factual findings of a trial court are presumed correct since, as the trier of fact, it is in the best position to weigh the evidence and evaluate the testimony. *In re Brown*, 98 Ohio App.3d 337, 648 N.E.2d 576 (3d Dist.1994). Moreover, "[e]very reasonable presumption must be made in favor of the judgment and the findings of facts [of the trial court]." *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). Thus, judgments supported by some competent, credible evidence going to all essential elements of the case are not against the manifest

weight of the evidence. *Id.*; *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 13} A juvenile court may grant permanent custody of a child to a public services agency if the court finds, by clear and convincing evidence, two statutory prongs: (1) the existence of at least one of the four factors enumerated in R.C. 2151.414(B)(1), and (2) that the child's best interest is served by a grant of permanent custody to the children's services agency. *In re M.B.*, 10th Dist. No. 04AP755, 2005-Ohio-986, ¶ 6. Clear and convincing evidence requires that the proof "produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re Coffman*, 10th Dist. No. 99AP-1376, 2000 WL 1262637 (Sept. 7, 2000), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 14} In making a finding under R.C. 2151.414(B)(1)(a), that the children cannot be placed with their parents within a reasonable time or should not be placed with their parents, the court need find, by clear and convincing evidence, that only one of the factors enumerated in R.C. 2151.414(E) exists.

{¶ 15} Once a finding is made by the court satisfying one of the factors enumerated in R.C. 2151.414(B)(1), its analysis turns to the second prong, the best interest of the child. In making this determination, R.C. 2151.414(D)(1) provides that 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 ending on or after March 18, 1999;

(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.

{¶ 16} The factors set forth in R.C. 2151.414(E)(7) through (11) include (1) whether the parents have been convicted of or pled guilty to various crimes, (2) whether medical treatment or food has been withheld from the child, (3) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse, and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code

requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent, (4) whether the parent has abandoned the child, and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶ 17} In its judgment entry, the court stated that "the parents' behavior borders on an obsession with one another," creating a toxic and dysfunctional environment for the children such that the best interests of the children would be harmed by continued exposure to the parents. The court found that there was clear and convincing evidence, pursuant to R.C. 2151.414(B)(1)(a), the first factor, that the children could not be placed with either parent within a reasonable time and should not be placed with either parent. The court also found that there was clear and convincing evidence, pursuant to R.C. 2151.414(E)(1), the first factor, that despite reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the children to be placed outside the home, the parents had failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside their home. The court further found, pursuant to R.C. 2151.414(E)(4), the fourth factor, that the parents had demonstrated a lack of commitment to the children.

{¶ 18} In the first assignment of error, appellant M.B. argues that the trial court's decision to grant permanent custody of A.B., Z.B. and B.B. to LCCS was against the manifest weight of the evidence. M.B. contends that there was no clear and convincing evidence that he failed to complete his case plan. We disagree.

{¶ 19} Ohio courts uniformly hold that "[n]on-compliance with a case plan is grounds for termination of parental rights." *In re Campbell* (2000), 138 Ohio App.3d 786, 793.

{¶ 20} The testimony of caseworker Graham, as well as the documents admitted into evidence, establishes that while he completed some portions of his case plan, he did not complete his entire case plan. Next, appellant contends that there was no credible evidence that he had failed to obtain adequate housing, the only evidence coming from the testimony of Graham and the GAL. However, as discussed above, the credibility of the witnesses is not a matter to be considered by this court.

{¶ 21} In the alternative, M.B. contends that he was not given enough time to complete his case plan.

{¶ 22} Although Ohio statutes do not specify exactly how much time parents have to work on case plans, the courts generally permit a reasonable amount of time under the circumstances and as is necessary to effectuate the best interests of the children. "[A parent] is afforded a reasonable, not an indefinite, period of time to remedy the conditions causing the children's removal." *In re L.M.*, 11th Dist. No. 2010-A-0058, 2011-Ohio-1585, ¶ 50.

{¶ 23} Here, M.B.'s case plan shows he was scheduled to begin his mental health counseling in 2009. By the time of the permanent custody hearing in this case, approximately three years had elapsed after the case was opened. We find this to be a reasonable time for appellant to have completed the mental health portion of his case plan

and to obtain adequate housing. Accordingly, M.B's first assignment of error is found not well-taken.

{¶ 24} In the second assignment of error, M.B. contends that the court erred in finding that LCCS made reasonable efforts to reunite the family.

{¶ 25} In a reasonable efforts determination, the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute. *In re Myers*, 4th Dist. No. 02CA50, 2003-Ohio-2776, ¶ 18. A "reasonable effort" is an "honest, purposeful effort, free of malice and the design to defraud or to seek an unconscionable advantage." *In re Weaver*, 79 Ohio App.3d 59, 63, 606 N.E.2d 1011 (12th Dist.1992).

{¶ 26} Appellant's argument is refuted by the evidence set forth above as to the LCCS's extensive efforts over three years to assist all of the appellants in reuniting with the children. The sheer number of professionals involved with this case and the variety of services offered clearly show that LCCS put consistent effort into keeping the children safe and assisting the parents in remedying the problems that led to the removal of the children from the home. Quite simply, the efforts were for naught as appellants consistently failed to modify their behavior, oftentimes escalating their behavior. Finding that there was competent, credible evidence to support the trial court's determination that appellee made reasonable efforts to reunify appellants with the children, M.B.'s second assignment of error is found not well-taken.

{¶ 27} The third assignment of error is submitted by mother and J.J. They contend that the court erred in denying maternal grandmother legal custody of the children. They argue that the reasons maternal grandmother found it necessary to initially return the children to LCCS have been remedied and she now presents the least restrictive alternative.

{¶ 28} Appellants lack standing to bring this argument.

> "'[A] parent has standing to challenge the trial court's failure to grant a motion for legal custody filed by a non-parent because the court's denial of that motion led to a grant of permanent custody to the children services agency, which impacted the residual rights of the parent. * * * The parent has standing to challenge only how the court's decision impacted the parent's rights, however, not the rights of the third party.' In re J.J., 9th Dist. No. 21226, 2002-Ohio-7330, ¶ 36, citing In re Evans (Feb. 2, 2000), 9th Dist. No. 19489." In re R.V., 6th Dist. L-10-1278, L-10-1301, 2011-Ohio-1837, ¶ 15.

{¶ 29} Appellant in *In re J.J., supra*, whose parental rights had been terminated, argued that the court erred in failing to grant legal custody of her child to a friend. The court explained:

> The parent has standing to challenge only how the court's decision impacted the parent's rights, however, not the rights of the third party. * * * In other words, Mother has no standing to assert that the court abused its

discretion by failing to grant her friend legal custody of J.J. Her challenge is limited to whether the court's decision to terminate her parental rights was proper. Id. at ¶ 36.

{¶ 30} Here, appellants make no new legal argument that the trial court's permanent custody decision was erroneous. Accordingly, appellants' third assignment of error is found not well-taken.

{¶ 31} For the foregoing reasons, 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE