

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

In re A.F.

Court of Appeals No. OT-11-035

Trial Court No. 21030031

DECISION AND JUDGMENT

Decided: February 22, 2012

* * * * *

Ron Nisch, for appellant.

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Joseph H. Gerber, Assistant Prosecuting Attorney, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellant father and granted permanent custody of his child A.F. to appellee Ottawa County Department of

Job and Family Services (“the agency”). For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant (“father”) sets forth the following assignments of error:

I. The Trial Court’s decision that pursuant to R.C. Sec. 2151.414, the child A.F. could not be placed with appellant within a reasonable time and should not otherwise be placed with Appellant, was an abuse of discretion. (R. 74).

II. The Trial Court’s decision that, pursuant to R.C. Sec. 2151.414, that granting permanent custody of the child A.F. to Ottawa County Department of Jobs and Family Services would be in the child’s best interests was an abuse of discretion. (R. 74).

{¶ 3} The agency first became involved with this family in March 2010 when the newborn sibling of A.F. tested positive for THC at birth. A.F.’s sibling is not a subject of this appeal. We also note that mother has not appealed. Abuse of A.F., then one year old, had been substantiated in January 2010 in Butler County due to a domestic violence incident in the home which led to father’s conviction and subsequent incarceration. As a result, sometime during 2010, a civil protection order was issued preventing father from having contact with mother and A.F. On July 21, 2010, the agency filed a motion for emergency shelter care hearing as to the two children, who were then in the custody of their mother. The trial court granted emergency temporary custody of the children to the agency by order dated July 21, 2010. Father was still incarcerated at that time. An

adjudicatory hearing was held on August 18, 2010, and at that time mother admitted to the allegations that A.F. was an abused and dependent child. Father had been served with a summons and a copy of the complaint but failed to appear. The trial court found that father was currently incarcerated and was expected to be released in October 2010. The court further found that the agency had made reasonable efforts to prevent the removal of the children from their home and that the agency had offered voluntary protective services to mother, as well as rental payment assistance, day care, counseling and transportation assistance. The agency requested a home study for maternal grandmother and noted that there were currently no other relatives able and appropriate to care for the children. The trial court ordered that the children should remain in the temporary custody of the agency and set the matter for disposition.

{¶ 4} The matter came before the court for disposition on September 17, 2010. Father was not present or represented by counsel, although duly notified. Mother advised the court that she wished to enter into an agreement as to all matters relating to disposition. Therefore, at the conclusion of the hearing, the trial court ordered that A.F. remain in the custody of the agency, with placement and planning to include provisions for permanency planning.

{¶ 5} On June 17, 2011, the agency filed a motion for permanent custody of A.F., alleging that mother had failed to timely submit to required assessments, failed to complete drug treatment or parenting classes, failed to maintain safe and stable housing, failed to complete counseling or meet with her case manager, and abruptly moved out of

town and stopped visiting her children. Additionally, appellant father had not made contact with the agency in over one year.

{¶ 6} The permanent custody hearing was held on August 15 and 16, 2011. Mother and father were both present and represented by counsel. The trial court heard testimony from two of the agency caseworkers assigned to the family, the caseworkers' supervisor, the CASA worker appointed to the case, the Joyful Connections staff worker who supervised mother's visitations with the children, and the agency's foster care worker assigned to the family.

{¶ 7} Caseworker Amy Marek testified that she worked with the family from April 2010 until April 2011, when mother moved out of town. The agency initially offered mother voluntary protective services due to indications that mother's relationship with father was abusive. Due to mother's failure to comply with any of the requirements of her case plan and her refusal to provide a drug screen, the children were removed from her custody and a complaint was filed. Marek testified that a case plan was offered to mother. Father was incarcerated at that time and the caseworker did not speak to him until after he was released sometime around October 2010. Marek testified that sometime after father's release, he told her he was under the impression that "mom was doing everything" and would get the children back soon. Marek told father that was not the case and that she understood there was a civil protection order which had to be modified before he could visit the children. Marek told him that if he wanted to reunify with A.F. there were specific steps he had to take. She also expressed concern about his

domestic violence against mother. When Marek asked father where he was living, he said “here and there” and that he was going to move back to Ottawa County so that he could be with A.F. Father then told Marek he would contact her but Marek testified that she did not hear from father after that. The only other time Marek spoke to father was in July 2011 at court. Marek testified that they spoke about why he had not called to check on his child. A case plan was not developed for father because he did not contact Marek as he had said he would. Marek testified that the civil protection order was dismissed on April 11, 2011.

{¶ 8} Aja Beckley, a social services worker with the agency, testified that she was one of A.F.’s foster care workers until May 2011. Beckley testified that she visited A.F. and A.F.’s sibling in the foster home each month and stated that the foster parents had not voiced any concerns with the children recently. The foster home is clean, well-maintained and safe, with an appropriate bedroom setting for the children. The foster parents interact appropriately with the children, who appear to be clean and well-fed. Beckley believes that a bond has developed between the children and their foster parents. She has no concerns about the children in their foster home. Mindy Gallant, supervisor for children services at the agency, testified that she had received no reports of any problems with the foster home.

{¶ 9} CASA worker Connie Snyder testified as to monthly visits with A.F. in the foster home since August 2010. A.F. arrived at the foster home with a severe case of head lice as well as behavioral issues which included biting other children, trouble

sleeping and a refusal to obey. All of A.F.'s behavioral issues have resolved. The foster home was appropriate and tidy and the foster parents spoke to A.F. in a calm and soothing tone of voice. She observed constant interaction between the foster parents, A.F. and A.F.'s sibling. Based on her visits to the foster home, Snyder had no concerns about the children living with the foster parents. Snyder testified that father called the CASA office shortly before the permanent custody hearing; she told him at that time that he could call the office any time he had questions about the case. Snyder did not meet with father in person prior to the hearing. Snyder's recommendation to the court was that reunification with mother and father was not in the children's best interest.

{¶ 10} The trial court also had before it a written report from A.F.'s guardian ad litem, who concluded that it was in A.F.'s best interest to be placed in the permanent custody of the Ottawa County Department of Job and Family Services.

{¶ 11} On September 26, 2011, the trial court filed a detailed judgment entry in which it ordered that the parental rights of both parents as to A.F. be terminated and that permanent custody of A.F. be granted to the Ottawa County Department of Job and Family Services. It is from that judgment that father appeals.

{¶ 12} In support of his first assignment of error, father asserts that the trial court's decision that A.F. could not be placed with father within a reasonable time and should not otherwise be placed with father was against the manifest weight of the evidence and an abuse of discretion. In support, father argues that the agency did not make reasonable efforts to implement a case plan and reunify him with A.F.

{¶ 13} In granting a motion for permanent custody, the trial court must find that one or more of the conditions listed in R.C. 2151.414(E) exist as to each of the child's parents. If, after considering all relevant evidence, the court determines by clear and convincing evidence that one or more of the conditions exists, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1). Further, pursuant to R.C. 2151.414(D), a juvenile court must consider the best interest of the child by examining factors relevant to the case including, but not limited to, those set forth in paragraphs 1-5 of subsection (D). Only if these findings are supported by clear and convincing evidence can a juvenile court terminate the rights of a natural parent and award permanent custody of a child to a children services agency. *In re William S.*, 75 Ohio St.3d 95, 661 N.E.2d 738 (1996). Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 14} Prior to an award of permanent custody to a public children services agency, the trial court must determine whether the agency has made "reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." R.C. 2151.419(A)(1). "Reasonable efforts are described as being a good faith effort which is 'an honest, purposeful effort, free of malice and the desire to defraud

or to seek an unconscionable advantage.”” *In re Cranford*, 2d Dist. Nos. 17085 and 17105, 1998 WL 412454 (July 24, 1998), citing *In re Weaver*, 79 Ohio App.3d 59, 606 N.E.2d 1011 (12th Dist.1992). “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 Smith*, 2d Dist. No. 2001-CA-54, 2002 WL 538888 (Apr. 12, 2002).

{¶ 15} The record before us reflects that copies of judgment entries were sent to father on August 9 and 16, 2010, at the Butler County Jail but were returned as not deliverable. Further, the record shows that father received notice of the September 17, 2010 disposition hearing and the May 23, 2011 review hearing but did not appear at either hearing. The judgment entry from the review hearing states that father was recently released from jail but had not contacted the agency as of that date. At the permanent custody hearing, caseworker Amy Marek testified that father was incarcerated when the agency initially received the case. She spoke with father by phone when he first was released and he indicated he thought mother was doing everything necessary to regain custody of the children. At that time, Marek mentioned the civil protection order and told father he had to have it modified before he could see his children. Father told Marek he would contact her when he moved to Ottawa County but he failed to do so. As a result of the foregoing, a case plan was not developed for father.

{¶ 16} Our examination of the record reveals that father showed a lack of effort and commitment to the reunification process. Due to father’s incarceration, his failure to attend court hearings, and his failure to contact the social worker after his initial phone

call, the agency was not able to plan and implement services for father. It is clear from the record that father was not incarcerated the entire time the agency had temporary custody of A.F. Therefore, there was a period of time between his release from jail sometime in 2010 and the date of the permanent custody hearing nearly one year later during which he could have contacted the agency to inquire as to visitation and case plan services in order to reunify with A.F.

{¶ 17} The record reflects that the trial court found, pursuant to R.C. 2151.414(E)(4), that A.F. could not be placed with either parent within a reasonable time and should not be placed with either parent for several reasons. Specifically as to father, the trial court found that A.F. had been in the same foster home since being removed from her mother's custody in July 2010 and that A.F. enjoyed a good relationship with the foster parents and foster siblings. The trial court also noted the CASA's conclusion that "[father] has shown no interest in A.F. since being released from prison in October of 2010. It is only when permanent custody papers were filed that [father] came forward."

{¶ 18} Based on all of the foregoing, we find that the trial court's decision granting permanent custody of A.F. to the agency was supported by clear and convincing evidence. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 19} In his second assignment of error, father asserts that the trial court's decision to grant permanent custody to appellee was not in A.F.'s best interest. Father argues that the trial court was not in a position to make a determination as to the child's

best interest without father having been provided with a case plan and the opportunity to comply with services.

{¶ 20} As to A.F.'s best interest, the trial court found that A.F.'s behavior had improved greatly since being placed in the foster home; that foster father is employed and foster mother remains at home to care for the children; that A.F. had been in the foster home for over 12 continuous months; that A.F. was in dire need of permanency; that an award of permanent custody to the agency was the only means of assuring said permanency, and that the foster parents may be interested in future adoption of A.F. and A.F.'s sibling.

{¶ 21} These findings were supported by witness testimony as summarized above and by other evidence in the record. Accordingly, we find that the trial court's decision to award permanent custody of A.F. to the Ottawa County Department of Job and Family Services is in A.F.'s best interest. Appellant father's second assignment of error is not well-taken.

{¶ 22} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen J. Yarbrough, 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:
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