

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

In re S.B., T.B., I.B.

Court of Appeals No. WD-12-024

Trial Court No. 2009 JB 1198

DECISION AND JUDGMENT

Decided: March 29, 2013

* * * * *

Elizabeth A. Mertz, for appellant.

Jeffrey P. Nunnari, for appellee, S.B. and T.B.

James A. Hammer, for appellee, CASA.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, I.B., appeals from the April 30, 2012 judgment of the Wood County Court of Common Pleas, Juvenile Division, which modified the case plan and permanency plan for I.B. The court-appointed special advocate, as well as S.B. and T.B.,

collectively, oppose reversing the court's order. Because we find the trial court did not abuse its discretion, we affirm. Appellant asserts the following single assignment of error on appeal.

THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS' [sic] DISCRETION, AT THE POST DISPOSITION HEARING, WHEN IT ORDERED [S.B.] AND [T.B.] TO REMAIN IN THEIR CURRENT PRE ADOPTIVE PLACEMENT AND [I.B.] TO SEEK OUT POTENTIAL ADOPTIVE PLACEMENTS. [SIC]

{¶ 2} The three children were adjudicated neglected on November 10, 2009. On March 3, 2011, the parental rights of the biological parents were terminated and permanent legal custody was placed with The Wood County Department of Job and Family Services (hereinafter "the agency"). The three children were placed in the potential adoptive foster home of the W. family, C.W. and J.W., in February 2011. However, after nearly six months in the home, the W. family sought respite removal of I.B. due to her behavioral issues. Following a hearing on September 1, 2011, the court ordered that S.B. and T.B. remain in the W. home, I.B. be placed in another home, contact between the siblings be facilitated, and an assessment be conducted regarding the impact of separating the sibling group.

{¶ 3} On January 10, 2012, the Wood County assistant prosecutor moved for an evidentiary review hearing. The court also conducted an in-camera interview of the children on April 18, 2012, where the court observed the bond between the children and

both older children expressed a desire to remain in their current pre-adoptive home and visit I.B. while I.B. expressed a desire to live with her siblings. A final hearing was held on April 19, 2012. The following evidence was presented at the hearing.

{¶ 4} Tonya Camden, a case manager for appellee, testified that she first came in contact with the children in 2009 after they were removed from their mother's home. The children were 9, 7, and 5 at the time. Camden worked to reunify the family, but the mother could not resolve the issues of neglect and homelessness. The children were first placed with the D. family for 15 months as a treatment foster home.

{¶ 5} While the children were with the D. family, each of the children had behavioral issues. All three children had weekly therapy to deal with the trauma they suffered due to sexual and physical abuse which they both experienced and witnessed. T.B., who had been identified as having some mental health issues, was eventually hospitalized to deal with the issues. The D. family was very successful in controlling the behavioral issues and making progress with the girls.

{¶ 6} Before the children moved to the W. home as a pre-adoptive placement, Camden talked with the W. family about the children and their issues, allowed the W. family to read the files, and had the W. family talk to the D. family. The agency intended at that time that the children would stay together and continue to receive intensive, weekly therapy. Camden still believes that the children should be adopted together.

{¶ 7} C.W., a clinical therapist specializing in mental health and substance abuse at St. Vincent Mercy Medical Center, testified that he had 4 children living at home at the

time the siblings were placed with him. After some respite weekends together in November 2010, the children were placed in his home beginning February 25, 2011. While the agency had not yet obtained permanent custody, the intent was that the W. family would eventually adopt all three siblings.

{¶ 8} C.W. described the oldest child, S.B., 11 years old, as withdrawn, introverted, and quiet, and also as a caregiver for her younger siblings. T.B., 8 years old, was fun loving and very caring; but, she needed a lot of nurturing and physical contact. I.B., the youngest at 7 years old, was introverted at times, funny and exuberant, liked to laugh, and also liked to be rocked a lot. All of the girls were very polite and grateful for their care. Initially, I.B. was a little more obstinate, but did not seem out of the ordinary for a child of her age.

{¶ 9} Over the second month, the children experienced a lot of changes as they adapted to a new home, school, and family of six children. C.W. began to notice that T.B. was becoming more defiant and more aggressive. He was concerned about her homicidal or suicidal thoughts and psychiatric care was sought for her in March. Adjustment of her medication helped her behavior.

{¶ 10} By April or May, toward the end of the school year, I.B.'s behavior began to deteriorate. She became more defiant, would not listen, and was hard to redirect. She was staying up late at night. She was starting fights. She was taking things without permission, embellishing or fabricating facts, and was caught cheating at school. She was engaging in inappropriate sexualized behavior. She was dressing provocatively and

watched inappropriate dancing videos on the computer. They did not seek psychiatric care for I.B. because she was not exhibiting the same self-destructive behavior as T.B. The final straw occurred in August, when I.B. defied C.W. and ran in front of a car that was entering the property. He felt he needed some respite from her behavior and asked that she be removed from the home on August 4, 2011. After I.B.'s removal from the home, the W. family discovered the household ran much smoother without I.B.

{¶ 11} Camden acknowledged that such behaviors were not out of character for I.B. However, Camden was concerned that there had been a ten-week delay after therapy had ceased before it was started in a location near the family. After that, there was every other week therapy, and not all of the appointments were kept. C.W. testified that there were issues with transferring therapy to a local provider, which he acknowledged disrupted the therapy when the children when they first came to his home. But he believed I.B. did fine during the first month or two. He also noted the children may have also had their final visitation with the biological mom during that time.

{¶ 12} At the time of the hearing, C.W. testified that S.B. was doing well in school and becoming more socialized. She helped out around the house and was giving hugs instead of asking for them. T.B. was also doing well in school and could initiate conversations and make friends. Both girls were active in school and participated in 4-H projects. T.B.'s medication continued to work very well for her and her outbursts had decreased.

{¶ 13} The siblings had visits every other week after I.B. was removed. Just prior to trial, the girls had spent three respite weekends together. S.B. and T.B. did not care about seeing I.B. at first, and the first visit did not go well. S.B. and T.B. called the W. family often. The second visit was better. The last visit did not include much interaction because there was a baby present, and the children seemed more focused on the baby than each other.

{¶ 14} Despite the fact that S.B. and T.B. did not talk much about I.B. after the visits, C.W. observed that spending time with I.B. had an impact on them. Afterward, S.B. was subdued and pointed out the negative consequences they received for their behavior. T.B. felt there was a lot of confrontation between her and I.B. and T.B.'s mood was noticeably disrupted for a couple of days. While he generally agreed that siblings should be kept together, C.W. did not believe these three children should stay together because I.B.'s behavior negatively impacted her siblings. He also thought I.B. would be better off with a family where she could be the main focus of the parents and get more attention.

{¶ 15} C.W. and J.W. were willing to adopt S.B. and T.B. and would be willing to maintain telephone contact between these girls and arrange special outings. However, he testified on cross-examination that he had not required S.B. and T.B. to call I.B. since her removal in August. He explained that he believed the calls were unnecessary due to their every other week visitations and the special respite weekends. He also testified that he had attempted to maintain contact between the siblings and their older half-brother, but

the brother had never been available when the C.W. called the number the agency provided.

{¶ 16} While the girls had expressed some complaints about C.W. wearing boxer shorts in front of them, burning deceased kittens, and lying beside them at night, the agency had not removed the girls from his care.

{¶ 17} Camden observed the sibling visitations. While the first 20 minutes were difficult, the children eventually played together and interacted well. She recalled, however, one visit that did not go well and learned that I.B. had not taken her medication prior to the visit. Camden questioned whether T.B. was attempting to tell everyone what they wanted to hear because she would tell J.W. that she did not like the respite weekends, because she feared she would not be allowed to go home afterward, and yet tell Camden that she liked the visits.

{¶ 18} After removal from the W. home, I.B. was placed in foster care first with the B. family from August 2011 to January 2012. A.B. testified that I.B. was his first foster child and the time period she was in his home was consuming and draining. He analyzed and documented her behavior one day for eight hours and determined that she asked a self-consuming question once every minute. No matter how many of her requests he fulfilled, she was never satisfied. She also never showed any interest in the family.

{¶ 19} A.B. constantly worried about I.B. doing something that could cause damage to others. I.B. was fighting with A.B.'s two-year old daughter one day and

picked the child up and slammed her head into the floor. I.B. also pushed A.B.'s daughter once after I.B. was disciplined. Another time, I.B. was talking gibberish (which A.B. came to realize was her method of distraction) and he caught her touching his two-month old son who was wrapped in a towel after a bath.

{¶ 20} Before he sent I.B. to school every day, A.B. had to search her backpack and clothing to make sure that she did not take any banned items to school. She would also steal from kids at school and bring items home. She would attempt to lie, but eventually would tell the truth. The teacher had trouble with I.B. as well and sent home daily reports. The final straw with I.B. came after it was discovered that she had taken inappropriate pictures of the children of some friends. A.B. asked that I.B. be removed from his home.

{¶ 21} While A.B.'s testimony was quite harsh in his reference to I.B. and her behavior, much of his frustration was based on the fact the agency had not forewarned him about any of I.B.'s behaviors or what to expect from her. He felt he was not aware of her problems and did not know how to address them because they were beyond anything he had known. After this experience, he and his wife decided not to be foster parents again.

{¶ 22} After I.B.'s removal from the home, she was placed with R.H., who had just become a foster parent in January 2012, and I.B. was her first foster child. R.H. was informed that I.B. was removed from her prior foster home because she was acting out sexually. R.H. also found I.B. to be combative and argumentative. She described I.B. as

having one train of thought, which resolved around her desires and wants. She was incapable of independent activities because of her impulsivity and R.H. would not leave I.B. alone for more than 30-60 seconds. Camden agreed that I.B. could not yet be left alone in a room without fear of what she might do.

{¶ 23} Two weeks prior to the hearing, I.B. was started on a psychotropic drug which seemed promising. At the time of trial, R.H. described I.B. as a little less impulsive, combative, and demanding. She was sleeping better. However, she still struggled with completing her homework. The need for stimulus was still there, as well as the desire for overt attention. Because of the short time-period, R.H. could not determine whether the medication had made a significant difference. The school reported that I.B. was doing better in the second semester. R.H., a teacher, found I.B.'s behavior was not typical for her age. R.H. would recommend that I.B. live with a family without other children and would not want to parent I.B. and her siblings together. R.H. testified that I.B. never indicated a desire to R.H. that she wanted to return to the W. home.

{¶ 24} Camden continued to seek an adoptive home for all three children and had at least three probable prospects. These families are aware that they might be adopting one or three children. The entire process of selecting another family and completing an adoption could take six to eight months.

{¶ 25} Regina Kupecky, a social worker, completed a sibling assessment based upon a 45-minute meeting with each of the girls. Kupecky knew that I.B. had been separated from her sisters because of behavioral issues. Kupecky had not talked to the

foster parents in order to remain neutral. She testified that she generally recommended that siblings be kept together and could not find any reason why these siblings should be separated.

{¶ 26} When she first met the children, Kupecky noticed that they played extremely well together. All of the girls indicated a desire to stay together with the W. family or go to a new foster home together. If they could not live together, the older children recommended visitation schedules that were unrealistic. The older children expressed concerns about I.B. being adopted separately and never seeing her again. Kupecky also determined that the children would tell adults what they wanted to hear because the children were afraid of losing the things they had been given.

{¶ 27} Even though staying together would require another traumatic move, Kupecky believed that experience would be less traumatic than being separated. She believed the sibling bond was necessary to ensure proper development. The girls were too young and immature to understand the consequences and meaning of permanent separation. Kupecky, agreed that separation could work if the two adoptive families made an effort at visitation. However, she had seen few families that could accomplish that goal.

{¶ 28} Camden testified that in November 2010, the girls wanted to be together.

Several weeks before the hearing, Camden spoke with S.B. and T.B. separately to tell them what was happening and the possible consequences of the hearing. The children did not understand that they might be separated from I.B. permanently. S.B. and

T.B. began to express more of a desire to live with the W. family and visit I.B. They both indicated that they would be sad if they did not see I.B. again. The older children worried about I.B. and wanted to make sure she also had a home. T.B. did not feel able to make a decision. S.B. expressed a desire to stay with the W. family, but wanted to think about the consequences of her choice. I.B. expressed a desire to live with her sisters.

{¶ 29} Although Camden understood that it would be difficult for S.B. and T.B. to move, Camden believed that the children should stay together because they had been through a lot together, they were not a threat to each other, and in the future they would want to be together. Camden was worried about the impact separation would have on the older children who would worry about I.B.'s welfare, especially if contact between the sisters was eliminated. The girls clearly missed each other and loved each other. Camden did not believe it would be beneficial to I.B. to be placed in a home by herself because she had always had her sisters with her.

{¶ 30} Furthermore, Camden doubted the W. family would continue visitation after adopting the older children and could not be ordered to provide visitation. She knew the W. family had not ensured the children maintained contact with their older half-brother who is developmentally delayed. Camden was aware that there was an initial issue with the correct phone number, but believed the W. family eventually received the correct number. Camden also pointed to the fact that the W. family would not allow the children to contact their biological mother who had sent letters to the agency. Some of the letters were shared with the children and they liked knowing that she was well. The

mother desired to receive letters from the children as well. Camden believed cutting contact with their mother was a sign the W. family would not continue contact with I.B. Camden also testified that visitation could become impossible if I.B. was adopted and moved away.

{¶ 31} Sandi Carsey, the Children's Service Administrator for the agency, testified that the agency had only removed I.B. from the W. home because the court ordered the other two children to be left in the home. Otherwise, the agency would have sought a placement for all three children based on its plan to have the siblings remain together. The agency determined it was best to keep the siblings together because they have a harmonious relationship, they do not harm each other, they are bonded, and the agency fears they will be negatively impacted by separation (especially if visitation is not guaranteed). The agency's interactions with the W. family since I.B. was removed led Carsey and Camden to believe that they were trying to keep S.B. and T.B. away from I.B. Carsey was aware of the changing opinions of the girls and felt that they were too young to make the decision of whether they should be separated. Carsey did not believe that I.B. was as bad as all of the foster families were indicating and emphasized that all of the children had behavioral issues. Carsey testified the agency had no concerns about the welfare of S.B. and T.B. in the W. home and all the children are better off than they were when they were living with their mother. She confirmed that the agency had seven families interested in adopting all three children. While moving two of the children out

of the W. home would be difficult for them, Carsey believed the impact would be less traumatic than the impact from permanently losing their little sister.

{¶ 32} Carol Fox, the CASA program director, testified as to Jan Lindemulder's training and experience as a CASA volunteer. Lindemulder had spent 526 1/2 hours on this case since the children were removed from their mother's care. Lindemulder was also appointed as the guardian ad litem. Fox did not know of anything that would diminish her opinion of Lindemulder's objectivity or her recommendations. Even though the interests of the girls conflicted, Fox believed that one CASA volunteer could accurately reflect the opinions or interests of each child. No matter what was the ultimate outcome of the hearing, Fox would be concerned for the welfare of these children because of the trauma they had already experienced.

{¶ 33} Lindemulder testified that she approved of the W. family adopting the two older children because they are happy and doing well, and they have a future there. Lindemulder recommended the agency should find a suitable separate home for I.B. because of her special needs.

{¶ 34} Lindemulder described I.B. as very intense. Lindemulder did not believe that I.B. was a danger to anyone, but she could at times have a very difficult time controlling herself in conversations, sitting still, focusing on an activity, laughing appropriately, etc. At other times, she could behave appropriately. Over the course the 20 months Lindemulder had been observing the children, she did not believe that I.B.'s

behavior had changed. Lindemulder agreed that I.B. still could not be left alone for fear of what she might do.

{¶ 35} Lindemulder also believed it was in I.B.'s best interest to maintain contact with her sisters. Lindemulder believed that the W. family understood the importance of maintaining the sibling relationships and would foster contact. The children themselves confirmed that they had trouble contacting their half-brother. Furthermore, Lindemulder testified she had talked to J.W. about a bowling activity where J.W. was allegedly trying to separate the siblings and discovered that I.B. had been left with J.W. without supervision and that I.B. was out of control.

{¶ 36} S.B. had always indicated to Lindemulder a desire to remain with the W. family while maintaining contact with I.B. T.B. also wants to live with the W. family, but would like I.B. to return. I.B. has expressed conflicting desires. Lindemulder believed the separation would allow the older two girls to keep moving forward and I.B. to obtain the special care she needed.

{¶ 37} On April 30, 2012, the trial court modified the case plan and permanency plan for the children. S.B. and T.B. would remain in the W. household as a pre-adoptive placement. The agency was required to seek separate adoptive placement for I.B., with a minimum of weekly contact between the siblings. At the time of the hearing, this case was also at the stage of its annual review under R.C. 2151.416. Incorporated into the court's April 30, 2012 judgment was the court's order extending the order of permanent legal custody of the girls with the agency.

{¶ 38} R.C. 2151.353(E)(1) provides that the juvenile court retains jurisdiction over any child for whom the court has issued a dispositional order pursuant to R.C. 2151.353(A) until the child attains age 18. Furthermore, R.C. 2151.417(A) and Juv.R. 36 provide that the court which issued a dispositional order pursuant to R.C. 2151.353 may sua sponte, or upon motion of a party, conduct a review at any time of the child's placement or custody arrangement, the case plan prepared by the public children services agency, the child's permanency plan if approved, and any other aspects of the child's placement or custody arrangement. The court is required to consider the safety and appropriateness of continuing the child's current placement and determine whether any changes should be made. In making this determination, the court, based upon the evidence presented at a hearing on the matter, shall set forth the changes or requirements it has deemed "necessary and in the best interest of the child." *Id.* On appeal, that decision will not be overturned unless a party shows that the trial court abused its discretion by rendering a judgment that was unreasonable, arbitrary, or unconscionable. *In re M.*, 6th Dist. No. WD-03-092, 2004-Ohio-3798, ¶ 11, citing *In re Franklin*, 88 Ohio App.3d 277, 279, 623 N.E.2d 720 (3d Dist.1993).

{¶ 39} Appellant argues that the trial court abused its discretion by separating the siblings based on several facts that she argues support keeping the children together. First, the older children expressed a desire to continue to see their younger sister, I.B., and she wants to live with her older sisters. Second, both older siblings expressed sadness at being separated from I.B. Third, all three children progressed well for the first

15 months of foster care in the D. home. Fourth, the W. family has indicated by their current behavior and statements that they will not facilitate continued contact between the siblings. Fifth, an expert in the field of sibling separation believes that the sibling bond is the most significant relationship in a person's life and separation of siblings can have a very detrimental and traumatic impact. Sixth, the CASA representative did not consider all of the relevant factors in making her recommendation and she did not give an objective recommendation.

{¶ 40} The CASA representative argues the trial court's determination is reasonable. First, while S.B. expressed a desire to see I.B., S.B. had never wavered from her desire to stay with the W. family. T.B. also expressed a desire to stay with the W. family, but also wished for I.B. to stay with her at the W. home. I.B., however, was not as consistent expressing her desires. Her most recent desire was to live with the P. family, a respite family, and she no longer cared about living with her sisters. Second, while the older two girls have successfully transitioned into the W. household and the W. family is willing to adopt them, I.B. has not been able to transition into any home. Even though I.B. is currently making progress in a home without other children, her behavior is still difficult to manage. Third, while disruption of the sibling bond will likely detrimentally affect all the children, removing S.B. and T.B. from a potential adoptive home will also have a negative impact on them. Likewise, S.B. and T.B. argued that the evidence clearly indicates that the best interests of the children may not be congruent and neither option is perfect.

{¶ 41} Upon a review of all of the evidence, we find that appellant has failed to demonstrate that the trial court abused its discretion in making its determination that the children should be separated for their collective and individual best interests. The trial court noted that separation is an undesirable option for all three children. The court also considered the facts that I.B. has special needs, joint custody of the children in the W. family household was not successful, I.B.'s placement in another home with other children was not successful, I.B.'s separate placement in a home without other children appears to be helping I.B.'s progress, the other two children have an opportunity to be adopted together, the sibling separation report was factually flawed, and the families currently appear to be agreeable with maintaining contact between the siblings. We find the trial court made a reasoned, thoughtful consideration of all of the facts before determining that the individual best interests of each child outweighed the benefit of keeping the sibling group together. Therefore, we find appellant's sole assignment of error not well taken.

{¶ 42} The judgment of the Wood County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the court 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.