[Cite as *In re L.C.*, 2013-Ohio-2357.]

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

In re L.C.

Court of Appeals No. L-13-1009

Trial Court No. JC 12227143

DECISION AND JUDGMENT

Decided: June 5, 2013

* * * * *

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal brought by the biological father of L.C. from the December 27, 2012 judgment of the Lucas County Court of Common Pleas, Juvenile Division, that granted permanent custody to Lucas County Children Services and further divested the appellant of any and all parental rights.

Facts and Procedural History

{¶ 2} On September 27, 2012, a complaint in dependency and neglect and permanent custody was filed by Lucas County Children Services (hereinafter referred to as "LCCS") seeking permanent custody of L.C. The undisputed facts establish that LCCS had a long history with the family that dated back to 2006, and that this complaint was the second filed with L.C. being the subject.

Discussion

{¶ 3} Appointed appellate counsel has filed a brief summarizing the relevant facts and proceedings. Counsel presents no argument for reversal and has advised this court that he has reviewed the record and can discern no meritorious claim on appeal.

{¶ 4} Appointed counsel has filed a brief and requested leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under *Anders*, if, after a conscientious examination of the case, counsel concludes the appeal to be wholly frivolous, he should so advise the court and request permission to withdraw. *Id.* at 744. This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* In addition, counsel must provide the appellant with a copy of the brief and request to withdraw, and allow the appellant sufficient time to raise any additional matters. *Id.* Once these requirements are satisfied, the appellate court is required to conduct an independent examination of the proceedings below to determine if the appeal is indeed frivolous. *Id.*

If it so finds, the appellate court may grant counsel's request to withdraw, and decide the appeal without violating any constitutional requirements. *Id.*

{¶ 5} In this case, appellant's appointed counsel has satisfied the requirements set forth in *Anders, supra*. This court further notes that appellant has not filed a pro se brief on his own behalf.

{¶ 6} Accordingly, this court shall proceed with an examination of the potential assignments of error set forth by counsel. We have reviewed the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 7} Counsel refers to several possible but not arguable issues: (1) LCCS failed to make reasonable efforts to prevent the continued removal of L.C.; (2) the juvenile court's findings that the children could not be placed with appellant within a reasonable time were not supported by clear and convincing evidence; and (3) ineffective assistance of counsel.

{¶ 8} Since the first two potential arguments are related, they will be considered together.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} The juvenile court in this case found more than one factor present. It specifically found four factors enumerated in R.C. 2151.414(E)(2), (11), (14) and (16).

{¶ 12} Those sections state:

> (2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;
>
> (11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to

those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(16) Any other factor the court considers relevant.

{¶ 13} In this case, the court found that the child was not allowed access to the bathroom nor was she being fed and her room smelled strongly of urine. She was not being fed breakfast at home and the legal custodian refused to let the child eat breakfast at school. She appeared at school on one occasion with a split lip sustained after she was assaulted by the legal custodian. The court found that neither parent had any contact with L.C. for a number of years.

{¶ 14} The court further found that case plan services were offered both parents in 2006 in an attempt to unify the family. Neither parent participated in services. In 2010, the parents were again offered the opportunity to participate in services for over one year but again neither parent had any involvement with LCCS or the child.

{¶ 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 R.C. 2151.412 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} The court considered these factors and found that the child had no significant relationships with any biological family other than her sibling brother who had been placed in the same foster home as L.C. The court also found that there were no family members appropriate for placement of L.C. and that the change since her removal from her prior legal custodian and into foster care has been remarkable. The court determined, based upon these considerations, that it was in the best interest of the child that permanent custody be placed with LCCS.

{¶ 18} With respect to the efforts of LCCS to prevent the continued removal of L.C, 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).

{¶ 19} However, in this case, a reasonable efforts determination was not required pursuant to R.C. 2151.419(A)(2)(e) which provides that reasonable efforts are not

necessary if the parent from whom the child was removed has had his or her parental rights involuntarily terminated with respect to a sibling of the child. It is undisputed that appellant herein has previously had parental rights involuntarily terminated with respect to another child.

{¶ 20} Based upon our review of the record, we find that the trial court's decision was supported by clear and convincing evidence.

{¶ 21} Appellant's final potential assignment of error claims that he was denied effective assistance of counsel.

{¶ 22} To prevail on a claim of ineffective assistance of counsel, appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied upon as having produced a just result. The standard requires appellant to satisfy a two-pronged test. First, appellant must show that counsel's representation fell below an objective standard of reasonableness. Second, appellant must show a reasonable probability that, but for counsel's perceived errors, the results of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *See also State v. Plassman*, 6th Dist. No. F-07-036, 2008-Ohio-3842. This burden of proof is high given Ohio's presumption that a properly licensed attorney is competent. *State v. Hamblin*, 37 Ohio St.3d 153, 524 N.E.2d 476 (1988). *State v. Newman*, 6th Dist. No. OT-07-051, 2008-Ohio-5139, ¶ 27. We have extensively reviewed the record from below and finding no merit in any of the proposed assignments of error submitted by counsel, we are unable to find any indicia of

ineffective assistance of counsel. Accordingly, we grant the motion of appellant's counsel to withdraw.

Conclusion

{¶ 23} We have accordingly conducted an independent examination of the record pursuant to *Anders v. California* and have found no error prejudicial to appellant's rights in the proceedings in the trial court. Finding this appeal to be wholly frivolous, the motion of counsel for appellant requesting leave to withdraw as counsel is granted.

{¶ 24} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties with notice of this decision.

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

James D. Jensen, J. _____
CONCUR.
JUDGE