[Cite as *In re S.R.*, 2013-Ohio-2358.]

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

In re S.R.

Court of Appeals No. L-12-1298
L-12-1326

Trial Court No. JC10205792

DECISION AND JUDGMENT

Decided: June 5, 2013

* * * * *

Kyle J. Bristow, for appellant L.S.

Laurel A. Kendall, for appellant S.R.

Julie C. Taylor, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} This is a consolidated appeal from a judgment issued by the Court of Court of Common Pleas, Juvenile Division, terminating appellants' parental rights and granting

permanent custody of their minor child to appellee, Lucas County Children Services ("LCCS"). For the reasons that follow, we affirm.

{¶ 2} Appellant, L.S. is the biological father of S.R. ("the child"), born in 2008. Appellant, S.R. is the biological mother of the child. On June 14, 2010, LCCS filed a complaint alleging dependency and neglect of the child. Following an adjudication hearing, a magistrate found the child to be neglected and dependent and awarded LCCS temporary custody of the child. On November 29, 2010, the court adopted the magistrate's decision. On December 7, 2011, LCCS filed a motion for permanent custody of the child. The motion was granted on November 7, 2012.

{¶ 3} Appellant, L.S., sets forth the following assignment of error:

I. The trial court's decision to terminate L.S.'s parental rights with his daughter was not supported by clear and convincing evidence.

{¶ 4} Appellant, S.R., sets forth the following assignments of error:

I. The court's grant of permanent custody to Lucas County Children Services was not supported by clear and convincing evidence.

II. The trial court's failure to issue written findings of fact stating the reasons supporting its "reasonable efforts" determinations constitutes prejudicial and reversible error as a matter of law.

{¶ 5} Both appellants, in their first assignments of error, contend that the court lacked clear and convincing evidence to grant permanent custody of their child to LCCS.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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 interests 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.

{¶ 10} 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.

{¶ 11} Ohio courts uniformly hold that "[n]on-compliance with a case plan is grounds for termination of parental rights." *In re Campbell*, 138 Ohio App.3d 786, 742 N.E.2d 663 (10th Dist.2000).

I. Appellant L.S.

{¶ 12} L.S. testified that he was incarcerated for domestic violence when the child was born. Upon his release, he moved in with S.R. and the child. Less than a month later, he was incarcerated again. He is now currently serving a four year prison sentence for burglary. He testified that he would like to see custody of the child go to his sister, D.S., in Tennessee.

{¶ 13} D.S. testified that she would like to adopt S.R. because "she's family." She acknowledged that she has had very minimal contact with the child, who was born in 2008. She also admitted to having a substance abuse problem ten years ago and she testified that she does not get along with her brother, L.S.

II. Appellant S.R.

{¶ 14} LCCS caseworker Tymeeka Gipson testified that she first became involved in this case in 2010 when it was reported to LCCS that S.R. was only feeding her two year-old child liquid nutritional supplements, such as brands Ensure, Boost and Pedialyte, because S.R. did not want the child to "get fat." She was known to leave the child alone or threaten to taser her neighbors if they refused to watch the child while she was at work. During the brief period of time L.S. was out of prison and living with S.R., S.R. left the child with L.S. while she went to work. On one such occasion, S.R. locked her apartment from the outside, leaving L.S. and the child locked in her third floor apartment for 16 hours with no means of safely escaping. S.R. claimed she worked 16-18 hours a day although no one at LCCS was able to confirm she was employed as S.R. refused to disclose her employer.

{¶ 15} A diagnostic assessment found S.R. to be suffering from adjustment disorder, cyclothymic disorder, delusional disorder and personality disorder. A case plan was developed by LCCS with recommended mental health services such as anger management classes. Gipson testified that S.R. is very aggressive and was frequently threatening LCCS staff at their agency. It was also recommended that she take

medication for her mental health problems. According to Gipson, S.R. refused to take medication stating that if it was given to her, she would just sell it. The case plan also included a recommendation for her to attend interactive parenting classes. LCCS, however, was unable to enroll S.R. in classes because of her unstable and untreated mental state. While S.R. regularly attended her visits with the child and while S.R. did complete her anger management classes, she did not complete her case plan. Gipson testified that in almost two years and despite the services offered to her, S.R. had made very little progress in remedying the issues which led to the removal of her child. As such, Gipson testified that she believed it would be in the child's best interest for permanent custody to be granted to LCCS so that the child could be adopted. She further noted that the current foster family the child has lived with for one year and nine months is interested in adopting her.

{¶ 16} The guardian ad litem ("GAL") for the child agreed with Gipson's recommendation for permanent custody. She testified that she frequently visited the child at her foster home and that the child, at the age of four, appears to have adjusted very well to her surroundings. She also added that she believes all of the child's needs are being met in the foster home. The GAL testified that her attempts to observe S.R. interact with the child were made difficult by S.R.'s openly hostile attitude towards her. The GAL noted that she had previously been involved with S.R. as a GAL when S.R. lost custody of her older child. In sum, the GAL testified that S.R.'s refusal to acknowledge

her mental health problems render it impossible for S.R. to provide a suitable environment for the child.

III. The Trial Court's Decision

{¶ 17} In its judgment entry granting LCCS permanent custody, the court found there was clear and convincing evidence, pursuant to R.C. 2151.414(B)(1), that it was in the best interest of the child to grant permanent custody to LCCS. Moreover, the court found that the child could not be placed with either parent within a reasonable time and should not be placed with either parent and, that the child has been in the temporary custody of LCCS for 12 or more months.

{¶ 18} 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. Pursuant to R.C. 2151.414(E)(2), the court found that S.R.'s mental illnesses are so severe that she is unable to provide an adequate home for the child. As to L.S., the court found that pursuant to R.C. 2151.414(E)(4) and (13), he has shown a lack of commitment towards his child as he has been incarcerated for most of the duration of the case. The court further stated that the child, having spent half of her life in foster care, is thriving in foster care and has a strong bond with her foster parent.

{¶ 19} Based on our review of the record as summarized above, we find that the trial court's decision was supported by clear and convincing evidence. Accordingly, both of appellants' first assignments of error are found not well-taken.

{¶ 20} In her second assignment of error, appellant S.R. contends that the court erred in failing to issue findings of fact and conclusions of law supporting the court's determination that reasonable efforts were made to prevent the child's removal from S.R.

{¶ 21} 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).

{¶ 22} The trial judge found that LCCS made "more than reasonable efforts to prevent the need to remove the child." These efforts were detailed in the judgment entry including the fact that Caseworker Gipson met S.R. face to face on a monthly basis while S.R. was attempting to complete her case plan. Because of S.R.'s hostility and uncooperativeness during these meetings, specific security protocols were put in place to secure the safety of Gipson, as well as everyone else present in the building at that time. While she initially regularly attended visitation with her child, her visitations were ultimately suspended due to inappropriate behavior with the child. The judgment entry notes that LCCS offered her numerous psychological and psychiatric services, some of

which she accepted, yet her behavior did not change. Based on the foregoing, we find, while unnecessary pursuant to R.C. 2151.419(A)(2)(e), that the trial judge adequately summarized and supported her reasonable efforts determination in her judgment entry. Accordingly, S.R.'s second assignment of error is found not well-taken.

{¶ 23} 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.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE