[Cite as *In re D.H.*, 2013-Ohio-5286.]

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

In re D.H. Court of Appeals No. L-13-1152

Trial Court No. JC 13231309

DECISION AND JUDGMENT

Decided: December 3, 2013

* * * * *

Mary C. Clark, for appellant.

David T. Rudebock, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, Juvenile Division, terminating appellant's parental rights and granting permanent custody of her minor child to appellee, Lucas County Children's Services ("LCCS"). For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant, D.J., is the biological mother of D.H., born in 2013. On March 18, 2013, LCCS filed a complaint alleging abuse, dependency and neglect of D.H. Following an adjudication hearing, a judge found D.H. to be to be abused, dependent and neglected. The court immediately proceeded to disposition and on July 3, 2013, LCCS was granted permanent custody of D.H. Appellant now appeals setting forth the following assignments of error:

> I. The trial court's finding that Lucas County Children Services made reasonable efforts to prevent the need for the continued removal of the child from the home was not supported by clear and convincing evidence.
>
> II. The trial court's finding that permanent custody should be awarded to Lucas County Children Services pursuant to O.R.C. § 2151.353(A)(4) and O.R.C. § 2151.414(D) and (E) was not supported by clear and convincing evidence.

{¶ 3} "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 A.H.*, 6th Dist. Lucas No. L-11-1057, 2011-Ohio-4857, ¶ 11, citing *In re Andy-Jones*, 10th Dist. Franklin Nos. 03AP-1167 and 03AP-1231, 2004-Ohio-3312, ¶ 28. We recognize that, as the trier of fact, the trial court is in the best position to weigh the evidence and evaluate the testimony. *Id.*, citing *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Thus, "[j]udgments supported by some competent, credible evidence

going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 4} A juvenile court may grant permanent custody of a child to a public services agency if the court finds, by clear and convincing evidence, the existence of one of the four factors listed in R.C. 2151.414(B)(1)(a) through (d) and that it is in the best interests of the child to grant permanent custody to the agency. *In re M.B.*, 10th Dist. Franklin No. 04AP755, 2005-Ohio-986, ¶ 6; R.C. 2151.414(B)(1).

{¶ 5} A finding under R.C. 2151.414(B)(1)(a) requires a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parents. R .C. 2151.414(B)(1)(a). R.C. 2151.414(E) directs a court to "enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent" where it finds by clear and convincing evidence that "one or more" of the factors listed under R.C. 2151.414(E) exist.

{¶ 6} We will initially consider appellant's second assignment of error where she contends that the award of permanent custody of D.H. to LCCS was not supported by clear and convincing evidence.

{¶ 7} At trial, LCCS caseworker Kesha Machaterre, testified that the agency has been involved with D.J. since 2010 when the agency removed another child from her custody. At that time, case plan services were offered to D.J. such as substance abuse treatment, mental health counseling and parenting classes. Machaterre testified that D.J.

failed to follow through with the case plan. Machaterre also testified that the agency is unable to verify that D.J. has maintained stable housing as she refuses to tell them where she lives.

{¶ 8} When D.H. was born in 2013, he tested positive for cocaine, opiates and marijuana. D.J. admitted to using cocaine during her pregnancy. D.J. asked for case plan services, but the agency did not provide them to her because she had failed to complete her previous case plan. She was, however, given information for available services should she seek assistance on her own.

{¶ 9} Machaterre testified that D.J. is on a waiting list for intensive outpatient treatment from a local mental health agency. Until she is admitted into the program, she is supposed to attend two alcoholics' anonymous meetings a week. Machaterre has only been able to verify that D.J. has attended four meetings in approximately one month's time. Her son, D.H., at the time of trial, was living with a foster family who was interested in adopting him. D.J. has consistently visited him.

{¶ 10} Machaterre concluded that her agency believes that permanent custody of D.H. is in the child's best interest due to D.J.'s past history with the agency and the fact that she continues to test positive for opiates.

{¶ 11} D.J. testified that in 2010, she wasn't ready to engage in services such as mental health counseling and substance abuse treatment but that she is ready now.

{¶ 12} The guardian ad litem ("GAL") testified that it is her recommendation that LCCS take permanent custody of D.H. She based her opinion on D.J.'s extensive drug

history and her repeated failure to follow through with mental health and substance abuse treatment. She testified that D.J. has not been cooperative in meeting with her. She acknowledged D.J.'s alleged willingness to follow through with treatment now, but she testified that her willingness has come too late.

{¶ 13} In concluding, by clear and convincing evidence, that D.H. cannot and should not be placed with either parent within a reasonable period of time, the court found that pursuant to R.C. 2151.414(E)(2), D.J.'s chemical dependency was so severe that it made her unable to provide an adequate permanent home for D.H. at the present time and as anticipated, within one year after the permanent custody hearing. The court found that pursuant to R.C. 2151.414(E)(4) and (10) that no father has come forward to establish a relationship with D.H. Finally, the court found pursuant to R.C. 2151.414(E)(11), that D.J. has had her parental rights involuntarily terminated with respect to a sibling of D.H.

{¶ 14} The court noted that D.J. failed to engage in mental health and substance abuse services when she faced the termination of her parental rights with regard to a sibling of D.H. "She continued to use illicit substances and was not able to maintain any prolonged period of sobriety." The court recognized that D.J. claimed she continued to use illicit substances during the course of her pregnancy because she did not know she was pregnant. Later, she claimed she tested positive for opiates because she had a doctor's prescription. However, she never produced valid documentation for a prescription. Recognizing D.J.'s proclamation that "she will do anything to get her child

back", the court pointed out that she had not attempted to receive mental health services or substance abuse counseling until a month before D.H.'s permanent custody hearing.

{¶ 15} Based on the foregoing, we conclude that there is competent, credible evidence in the record supporting a firm conviction or belief that mother suffers from chronic chemical dependency so severe that it makes her unable to provide an adequate permanent home for the children at the time of judgment and, as anticipated, within one year after the hearing on the motion for permanent custody.

{¶ 16} We next turn to the second prong, proof that an award of permanent custody is in the best interests of the child. 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.

{¶ 17} 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.

{¶ 18} In concluding that the award of permanent custody of D.H. to LCCS is in the child's best interest, the court found, pursuant to R.C. 2151.414(D)(1)(d), that D.H. was in need of a legally, secure permanent placement and that based on the GAL's report, the child was doing well in foster care and likely to be adopted by his foster family.

[D.J's] demeanor while testifying and admission of long history of usage without any significant period of sobriety leads the court to believe

that the child could not be reunified with [D.J.] within a foreseeable future. The child deserves a permanent and safe home. The child is placed in a prospective adoptive home and doing well.

{¶ 19} Upon a review of the trial record, we find competent, credible evidence exists to support the trial court findings under R.C. 2151.414(D)(1) and of the type to establish a firm belief or conviction that an award of permanent custody to LCCS is in the best interest of the child. Appellant's second assignment of error is found not well-taken.

{¶ 20} In her first assignment of error, appellant contends that the court's finding that LCCS made reasonable efforts to prevent D.H.'s removal was not supported by clear and convincing evidence.

{¶ 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. Athens 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 court in this case found that LCCS had made reasonable efforts to alleviate the need for the placement of D.H. outside of D.J's custody through referrals to substance abuse treatment programs, diagnostic assessments, mental health counseling

and case management services. While these services were only offered in her prior case, her inability to maintain a period of consistent sobriety prevented her from participating and benefiting from said services had they been offered in this case.

{¶ 23} Moreover, a reasonable efforts determination was not required here 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. In any event, we find that the trial judge adequately summarized and supported a reasonable efforts determination in her judgment entry. Accordingly, appellant's first assignment of error is found not well-taken.

{¶ 24} 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. _____
JUDGE
CONCUR.