

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

In re A.H.

Court of Appeals No. L-13-1160

Trial Court No. JC 12226514

DECISION AND JUDGMENT

Decided: December 24, 2013

* * * * *

James J. Popil, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellant, R.H., and granted permanent custody of minor child A.H. to appellee Lucas County Children Services (“LCCS”).¹ For the reasons below, the judgment of the trial court is affirmed.

¹ The child’s mother has not filed an appeal from the termination of her parental rights. Therefore, our discussion of the relevant facts and the issues raised on appeal focus primarily on appellant/father.

{¶ 2} Appointed counsel has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In his brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to identify any appealable issues.

{¶ 3} *Anders, supra*, and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (1978), set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. *Id.* Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 4} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders, supra*. Although appointed counsel provided appellant/father ("father")

with a copy of the brief with instructions that he could raise his own assignments of error and file a brief with this court, appellant did not do so within the allotted time.

Accordingly, this court shall proceed with an examination of the potential assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 5} The record reflects that A.H., biological child of appellant R.H., was born in Toledo, Ohio, in August 2012. On September 4, 2012, LCCS filed a complaint in dependency and neglect regarding A.H. At the time the complaint was filed, father was incarcerated. A shelter care hearing was held and the child's mother consented to an award of interim temporary custody to LCCS. On October 22, 2012, A.H. was adjudicated a neglected child and temporary custody was awarded to the agency.

{¶ 6} On March 11, 2013, the agency filed a motion for permanent custody of A.H. The matter came on for hearing on June 17, 2013. Witnesses included the family's LCCS caseworker, two mental health professionals who were involved with this case, one of mother's cousins who was investigated regarding possible custody of A.H. and the child's guardian ad litem.

{¶ 7} At the time the complaint was filed, the agency's concerns for father were related to substance abuse, mental health issues, a history of sexual offending, parenting skills, housing and income. Father is classified as a Tier II sex offender as a result of sexually abusing a seven-year-old child when father was 15 years of age. From the outset, the agency offered case plan services to father that included drug and alcohol

assessments, mental health assessments, case management services, sexual offender's treatment and visitation. Father completed a mental health diagnostic assessment on December 10, 2012, and was referred for treatment. He was diagnosed with schizoaffective disorder—depressive type, attention deficit hyperactive disorder, intermittent explosive disorder and a learning disability. Father failed to attend his scheduled intake appointment and did not return thereafter; accordingly, his case was closed in February 2013. Father also was diagnosed with cannabis dependence and referred to an intensive outpatient program but he did not follow through. He also refused to submit many of his required urine screens throughout the case. Father did not follow through with required sex offender's treatment and did not report a change of address to his probation officer, which resulted in his arrest in March 2013. Therefore, father was incarcerated at the time of the permanent custody hearing with several months remaining to serve. Due to father's incarcerations and lack of cooperation with mental health and substance abuse services, he could not be placed in a parenting program.

{¶ 8} The record reflects that father failed to secure appropriate, stable housing throughout the case. Additionally, father failed to attend 18 of his scheduled visitations with A.H. during the time he was not incarcerated. The child's guardian ad litem recommended that permanent custody be awarded to the agency because A.H. was in need of permanence and stability and because neither parent had made any significant progress on their case plan. She further testified that A.H. was very happy and bonded with the foster family and that all of the child's special needs were being met.

{¶ 9} At the conclusion of the hearing, the trial court made oral findings which were followed by a judgment entry filed July 17, 2013, awarding permanent custody of A.H. to LCCS. The trial court noted that it had seen no sign that either parent was seriously interested in making changes and, as to father, that he showed little interest in the case while he was released from custody for six months during the pendency of the case.

{¶ 10} Pursuant to R.C. 2151.414(B)(1)(a), the trial court found that A.H. could not be returned to either parent within a reasonable period of time and that, following removal of the child from the home, neither parent had substantially remedied the concerns that initially led to removal. Further, pursuant to R.C. 2151.414(E)(2), the court found that there is chronic mental illness and chemical dependency on the part of both parents and that they had not taken advantage of the services offered to remedy those issues. Additionally, pursuant to R.C. 2151.414(E)(4), the court found that the parents had not demonstrated commitment to the child by virtue of the fact that they failed to regularly visit when they were able to do so and failed to proceed with available case plan services.

{¶ 11} Specifically as to father, the trial court found, based on the testimony, exhibits and all other matters of record, that he was currently incarcerated for an 18-month sentence for which he had six more months to serve, had failed to attend sex offender's treatment, did not follow through with his probation officer, did not have appropriate housing, had a pattern of moving from place to place, and had not visited his

child for two months when he was released from custody. The trial court further found that father's unresolved issues of mental health and substance abuse made him unable to provide an adequate permanent home for the child at that time and, as anticipated, within one year after the hearing.

{¶ 12} Pursuant to R.C. 2151.414(D)(1)(a) and (d), the trial court found that there was clear and convincing evidence that an award of permanent custody was in the child's best interest. The court found that the agency had made reasonable efforts to provide services to the parents to avoid the continued need for removal from the home and that the agency had pursued a permanent placement for the child.

{¶ 13} Appointed counsel sets forth the following proposed assignment of error:

The trial court erred in awarding permanent custody of appellee Lucas County Children Services Board as it was against the manifest weight of the evidence as there was a suitable relative available to take legal custody.

{¶ 14} In support, appointed counsel refers to mother's biological cousin H.G., who testified she was willing to take legal custody of A.H., as a suitable relative. Appointed counsel states that appellant therefore might assert that there was a lack of clear and convincing evidence that the child's best interest was served by granting permanent custody to LCCS rather than to the relative.

{¶ 15} During presentation of the agency's case, when questioned as to whether LCCS had investigated family members for possible placement, the family's caseworker

testified that she had gone to H.G.'s home to talk to her and conduct a home study. The caseworker testified that H.G. asked her if the foster parent was interested in adopting and, when the caseworker responded affirmatively, H.G. said she would not want to pursue custody because it would not be fair to the child. The caseworker further testified that H.G. called her a few days later and complained that she was not told that the foster parent was black. The caseworker further noted a potential problem with H.G. due to a prior court order that A.H. have no contact with any maternal relatives, of which H.G. was one. She also testified that she discussed that concern with H.G.

{¶ 16} H.G. was mother's only witness at the permanent custody hearing. H.G. stated that she was no longer legally related to mother because she had been adopted out of mother's family. She further testified that she learned through Facebook that mother was involved with LCCS and immediately contacted the agency. In April 2013, the caseworker went to her home and conducted a home study. H.G. testified that in a later conversation, the caseworker told her the agency was looking to place the child with the foster parents and that because H.G. was no longer legally related to mother she would not be considered for legal custody or adoption. H.G. stated that she was still interested in legal custody, but not adoption, as legal custody would be in the child's best interest. She denied having told the caseworker that since the child was doing well in the foster home she was no longer interested in pursuing custody. H.G. further testified that she felt that mother should have custody of A.H. because "it's her child," although she admitted not knowing whether mother had completed any aspects of her case plan.

{¶ 17} The sole basis for appointed counsel’s proposed manifest weight argument is that there was a “suitable relative” available to take custody of A.H. and that relative placement would be in the child’s best interest. The extent of the evidence before the trial court on this issue, summarized above, consists of conflicting testimony as to whether H.G. was actually interested in receiving legal custody of the child. It is clear that the trial court, after considering the testimony and other evidence before it, determined that it was in the child’s best interest to remain in the foster home and not be moved into the home of a relative with whom the child had never had contact.

{¶ 18} 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.

{¶ 19} Our discussion above sets forth the trial court's basis for finding that an award of permanent custody was in the child's best interest. Additionally, we note that the trial court found that A.H. was currently in a legally secure placement where the child was thriving and treated as a member of the family. The court found that A.H. is bonded to the caregivers and that the caregivers are able to meet the child's special needs and, furthermore, wish to adopt.

{¶ 20} Based on the foregoing, including conflicting testimony from H.G. and the caseworker specifically as to H.G.'s interest in custody, this court finds that the record contains clear and convincing evidence to support the trial court's decision. Therefore, we find that the trial court's decision granting permanent custody of A.H. to appellee Lucas County Children Services is supported by law and was not against the manifest weight of the evidence. Appointed counsel's sole proposed assignment of error is without merit.

{¶ 21} Accordingly, upon our own independent review of the record, we find no grounds for a meritorious appeal. Appellant's counsel's motion to withdraw is found well-taken and is granted.

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

appellant 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

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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.</p>
