[Cite as *In re Er.P.*, 2014-Ohio-2831.]

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

In re Er.P., Em.P., Eli.W., Ela.W., En.W.

Court of Appeals No. L-14-1006

Trial Court No. JC 12226721

DECISION AND JUDGMENT

Decided: June 27, 2014

* * * * *

James J. Popil, for appellant.

Jill E. Wolff, for appellee.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating the parental rights of M.P. ("mother") and M.W. ("father"), and awarding permanent custody of the minor children Er.P., Em.P., Eli.W.,

Ela.W., and En.W. to appellee, Lucas County Children Services ("LCCS"). For the reasons that follow, we affirm.

A. Facts and Procedural Background

{¶ 2} At the outset, we note that M.P., the mother of all five children, is the only party appealing the trial court's judgment terminating parental rights. M.W., the father of the youngest three children, did not participate in the termination hearing and has not filed a notice of appeal. A.P., the father of the two oldest children, is deceased. Therefore, our discussion and analysis will focus only on the facts as they pertain to mother.

{¶ 3} The present matter originated on June 12, 2012, when LCCS received a referral that En.W. had been admitted to the hospital with multiple fractures to both legs and a broken rib, all in various stages of healing. En.W. was four months old at the time.

{¶ 4} On September 14, 2012, LCCS re-filed a complaint in dependency, neglect, and abuse, requesting permanent custody of the children. At the adjudication hearing on December 7, 2012, the parties stipulated to the contents of the complaint as amended, and to a finding of dependency as to all five children and to a finding of abuse as to En.W. Also reflected in the amended complaint was LCCS' decision to seek temporary custody of the children with the goal of reunification, instead of permanent custody.

{¶ 5} Within the stipulated complaint were various explanations by mother and father as to how En.W. was injured. In particular, mother explained to the caseworker that on June 10, 2012, Ela.W. jumped on En.W. while the younger child was in a car seat

and on another occasion while En.W. was on a bed. Mother alternatively explained to the orthopedist that she was not sure how the injuries occurred, but offered that the injuries could have been caused a few days earlier by her sister's children. Father indicated that the injury could have occurred on June 12, 2012, when he was sleeping on the couch and he awoke to find Ela.W. jumping on En.W., who was on the floor in a car seat.

{¶ 6} Additionally, the complaint noted that the maternal aunt reported to the LCCS caseworker that on June 8, 2012, she was babysitting En.W., and noticed that En.W. was unusually fussy and was screaming when she changed the diaper. The aunt took En.W. to the maternal grandmother who promptly called mother to have her take En.W. to the emergency room. No medical treatment was sought on that day. The parents, however, state that the aunt told them that on June 10, 2012, Ela.W. jumped on En.W. while the latter was getting a diaper change. The parents further state that the aunt took En.W. to the maternal grandmother, who then called the mother and said that she thought that En.W. had a problem with her belly, but that En.W. was fine because the child was quiet while being held by the grandmother.

{¶ 7} Finally, the complaint contained an opinion of a medical doctor that the injuries to En.W. required "repeated squeezing of the chest, as well as flailing or twisting motions of the extremities." The doctor also stated that the parents' explanation for the injuries were not consistent with the fractures observed in En.W.

{¶ 8} Following the adjudication of the children as dependent, and the award of temporary custody to LCCS, case plan services were offered to mother. Those services

included a diagnostic assessment, parenting classes, domestic violence classes, and a psychological evaluation. Mother was also asked to resolve her outstanding criminal warrants, which involved petty theft charges.

{¶ 9} On July 16, 2013, LCCS filed a motion for permanent custody of the children. The hearing on the motion was held on October 25, 2013. At the hearing, Rhonda Nicholson, the ongoing caseworker with LCCS, testified that mother completed her diagnostic assessment and was recommended mental health services because she was diagnosed with bipolar disorder and depression. Nicholson stated that mother began receiving her mental health services at Harbor, but then transferred to Unison because she was having difficulty getting appointments in with her therapist. Nicholson noted that although mother received her assessment in 2012, she did not begin services until July 15, 2013.

{¶ 10} In addition, Nicholson testified that mother completed her domestic violence classes at Project Genesis, and has completed a non-interactive parenting class. LCCS intended to have mother also complete an interactive parenting class, but the referral for that was delayed until mother completed her psychological exam. Nicholson testified that the results of the psychological exam in conjunction with the agency's decision to seek permanent custody resulted in mother not being referred to the parenting class.

{¶ 11} Finally, Nicholson testified that the children are doing well in their placement, albeit with a few issues with the older two children that are being worked on

through counseling. She also testified that mother's weekly visits with the children have gone well. Nicholson concluded by stating that LCCS believes that permanent custody to the agency is in the children's best interest due to the injuries sustained by En.W., and the fact that the perpetrator has not been identified and the parents do not acknowledge that the injuries were caused by physical abuse.

{¶ 12} Next to testify was Lloyd Letterman. Letterman conducted the mental health and substance abuse diagnostic assessment on mother, and was certified as an expert in those types of diagnostic assessments. He testified that based on the July 16, 2012 assessment, mother was diagnosed with bipolar one disorder, most recent episode depressed. As a result of that diagnosis, he recommended that mother receive mental health services from Harbor.

{¶ 13} Following Letterman, Robin Powell, an interim caseworker with LCCS, testified that during the five weeks she was assigned to the case, she met with mother and father once. During that visit, she asked mother to provide a urine sample, which came back diluted. Powell also testified regarding her perception that mother and father were still a couple.

{¶ 14} LCCS next called Dr. Janis Woodworth, who is a licensed psychologist and the clinical director at Harbor. Woodworth was certified as an expert in the areas of counseling, psychology, and evaluation of parents. As to mother's relationship status, Woodworth testified that mother stated she had been in the same relationship since she was 25 years old, and it was the most stable relationship she has had. The testimony then

transitioned to the results of the psychological evaluation that Woodworth performed on mother, which ended in April 2013. Woodworth testified that mother exhibited a low to average IQ, had a significantly higher than average level of emotional distress, and had a significantly higher than average level of psychological distress. She also testified that mother perceives her children as being hyperactive and difficult to manage, and that she perceives that she is isolated and does not have many people on whom to rely. However, Woodworth stated that she observed one of mother's visitations, and mother was able to attend to all of her children, and did a nice job in particular with her younger children. Ultimately, Woodworth diagnosed mother as "major depressive episode recurrent, severe," with some symptoms of post-traumatic stress disorder. Based on that diagnosis, Woodworth recommended that mother receive ongoing psychiatric services and counseling, and that she participate in an interactive parenting class. Woodworth concluded by stating that she did not recommend reunification with the children at the time of the evaluation because of the depression, and because of mother's difficulty verbalizing her responsibility for the safety of the children. Woodworth did offer on cross-examination, however, that if mother received the appropriate treatment and successfully completed the interactive parenting class, Woodworth's recommendation regarding reunification could change.

{¶ 15} Following Woodworth, LCCS rested while reserving the right to call the guardian ad litem as the final witness. Mother then called Augustine Abbott, supervisor of the Project Genesis domestic violence program, as her only witness. Abbott testified

that with the exception of an exit interview, mother has completed the domestic violence program. Abbott described mother as very vocal, and a leader that is trying to help the new women that come into the program. Abbott further stated that mother has demonstrated the change that is expected through completion of the program. Notably, Abbott testified that mother has not related to her that she is still in a relationship with her batterer, and Abbott has not observed anything to suggest that mother is still in such a relationship.

{¶ 16} The last witness to testify was Robin Fuller. Fuller was appointed to be the children's guardian ad litem three weeks before the hearing. Prior to that, Karen Bower was the children's guardian ad litem. Fuller testified that based on her review of Bower's file, the court documents, and Woodworth's evaluation of mother, her observation of a visit between mother and the children, and her separate meetings with the children, she concluded that it is in the best interests of the children that permanent custody be awarded to LCCS. Fuller came to this conclusion because her review of the facts indicated that En.W. was abused and the parents do not claim to know what happened to the child. Thus, Fuller believed that the children would not be safe to return to their parents' care. Further, Fuller testified that the children were doing well in foster care, and that the younger ones were doing quite well. She also explained that the older two children have been having some behavioral issues, but that those issues are being dealt with through counseling.

{¶ 17} Immediately following the presentation of evidence and closing arguments, the trial court found that permanent custody to LCCS was in the best interest of the children. In its written judgment entry, the trial court found by clear and convincing evidence that the children cannot and should not be placed with either parent within a reasonable amount of time pursuant to R.C. 2151.414(B)(1)(a) and 2151.414(E)(1), (15), and (16). The court further found by clear and convincing evidence that an award of permanent custody to LCCS is in the children's best interest pursuant to R.C. 2151.414(D).

B. Assignments of Error

{¶ 18} Mother has timely appealed the trial court's judgment terminating her parental rights, and now raises two assignments of error for our review:

> I. The trial court erred in finding that appellee Lucas County Children Services Board had made a reasonable effort to reunify the minor children with appellant M.P.
>
> II. The trial court erred in granting appellee Lucas County Children Services Board's motion for permanent custody as the decision was against the manifest weight of the evidence.

II. Analysis

{¶ 19} In order to terminate parental rights and award permanent custody of a child to a public services agency under R.C. 2151.414, the juvenile court must find, by clear and convincing evidence, two things: (1) that one of the enumerated factors in R.C.

2151.414(B)(1)(a)-(d) apply, and (2) that permanent custody is in the best interests of the child. R.C. 2151.414(B)(1). 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. The clear and convincing standard requires more than a preponderance of the evidence, but it does not require proof beyond a reasonable doubt. *Id.*

{¶ 20} "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, 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.

{¶ 21} R.C. 2151.414(B)(1)(a) provides that a trial court may grant permanent custody of a child to the agency if it finds that, in addition to the placement being in the best interest of the child,

> The child is not abandoned or orphaned, has not 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, * * * and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

R.C. 2151.414(E) requires a trial court to find that a child cannot be placed with either of the child's parents within a reasonable time or should not be placed with either parent if any of sixteen factors are met. Relevant here is R.C. 2151.414(E)(1), which states:

> Following the placement of the child outside the child's home and notwithstanding *reasonable case planning and diligent efforts by the agency* to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties. (Emphasis added.)

{¶ 22} In her first assignment of error, mother argues that LCCS did not make reasonable efforts to assist her in remedying the problem that caused the children to be removed from the home, namely the injuries suffered by En.W. and mother's failure to take responsibility for the safety of the child. Mother specifically points to LCCS' failure to refer her to interactive parenting classes, despite Woodworth's recommendation. Mother contends that the interactive parenting classes may have helped her to realize earlier the responsibilities and safety concerns of a parent to her children. Furthermore, mother argues that she completed all of the elements of the case plan to which she was referred, and therefore the trial court's determination that she failed to remedy the problems that caused the children to be removed from the home is against the manifest weight of the evidence.

{¶ 23} LCCS, on the other hand, argues that reasonable efforts were made, but mother did not make significant progress on her case plan, thus the goal changed from reunification to permanent custody, which precluded mother from being referred to interactive parenting classes. Since mother had not made significant progress in her case plan in that she still failed to accept responsibility for preventing En.W.'s injuries, was still in a relationship with father, and was not recommended to be reunified with the children by Woodworth, LCCS concludes that the trial court's finding that mother had not remedied the problems that caused the children to be removed from the home is not against the manifest weight of the evidence.

{¶ 24} "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 S.R.*, 6th Dist. Lucas Nos. L-12-1298, L-12-1326, 2013-Ohio-2358, ¶ 21. "A 'reasonable effort' is an 'honest, purposeful effort, free of malice and the design to defraud or to seek an unconscionable advantage.'" *Id.*, quoting *In re Weaver*, 79 Ohio App.3d 59, 63, 606 N.E.2d 1011 (12th Dist.1992).

{¶ 25} Here, the trial court found that LCCS' efforts in case plan management, visitation, diagnostic assessments, counseling, domestic violence services, and psychological evaluations were sufficient. Certainly, LCCS could have done more by referring mother to interactive parenting classes, but its failure to do so does not require the conclusion that LCCS did not make diligent efforts or provide a reasonable case plan. Moreover, we cannot conclude that the trial court's determination that mother has failed to remedy the problems is against the manifest weight of the evidence. As the trial court noted, mother had just begun mental health services despite having completed the diagnostic assessment 13 months prior, and had not made much progress. In addition, although mother denies being in a relationship with father, she uses his address, visits the children with him, and makes calls to the agency on his behalf. Finally, Woodworth did not recommend that mother be reunified with the children. Therefore, we find that there is competent, credible evidence in the record to support the trial court's determination that R.C. 2151.414(E)(1) applies.

{¶ 26} Furthermore, the trial court's finding that the factor in R.C. 2151.414(E)(15) applies is independently sufficient to require the court to conclude that the children cannot be placed with mother within a reasonable time or should not be placed with mother. R.C. 2151.414(E)(15) states,

> The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

Here, the trial court found that the seriousness of the injuries to En.W., in conjunction with the parents' denial of abuse and lack of insight into how the injuries were sustained, makes recurrence of those injuries likely. Based on the stipulated facts in the amended complaint, we cannot conclude that the trial court's finding is against the manifest weight of the evidence.

{¶ 27} Accordingly, mother's first assignment of error is not well-taken.

{¶ 28} In her second assignment of error, mother argues that the trial court's determination that permanent custody to LCCS is in the best interests of the children is against the manifest weight of the evidence.

{¶ 29} R.C. 2151.414(D)(1) provides, in pertinent part,

> In determining the best interest of a child * * * 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;
>
> * * *
>
> (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.

{¶ 30} Mother asserts that the evidence demonstrates that the children could be reunited with her upon her completion of her case plan services. Relative to R.C. 2151.414(D)(1)(d), mother contends that because she has successfully completed most of her services, the children would not need to be in the custody of LCCS for much longer. Further, her current ability to care for her children is a more appropriate alternative than permanent custody with the agency, especially in light of the children's strong bond with her.

{¶ 31} However, as discussed above, the trial court has found by clear and convincing evidence that the children cannot be returned to mother within a reasonable time or should not be returned to her. That finding is not against the weight of the evidence. Accordingly, we do not find mother's argument persuasive, and her second assignment of error is not well-taken.

III. Conclusion

{¶ 32} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Mother is 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.

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE