

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

In re A.R., D.R., Mc.R.

Court of Appeals No. L-13-1230

Trial Court No. JC 11214701

DECISION AND JUDGMENT

Decided: March 17, 2014

* * * * *

Stephen D. Long, for appellant.

Shelby J. Cully, for appellee.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, awarding permanent custody of A.R. (born January 5, 2003), D.R. (born August 27, 2004), and Mc.R. (born January 11, 2008) to Lucas County

Children Services (“LCCS”) and terminating the parental rights of the biological parents. For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} Appellant M.R. is the biological mother of A.R., D.R. and Mc.R.

{¶ 3} L.R. is the biological father of A.R. and the alleged biological father of Mc.R. H.T. is the alleged biological father of D.R. Neither father is a party to this appeal; thus, we will not discuss the case plan services and trial court findings that pertain to them.

{¶ 4} On November 24, 2010, LCCS received a referral alleging L.R. had digitally penetrated his then seven-year-old daughter, A.R. At the time, both father and daughter denied such an act occurred. Appellant did not believe the allegation to be true. The Lucas County Sheriff investigated but no charges were filed. A.R. was taken to the hospital where she was examined by a sexual assault nurse examiner (“SANE”). The SANE reported that A.R. would not cooperate with a physical examination. The SANE further reported that A.R. knew where her “privates” were and indicated that her dad had played “tickle games” there.

{¶ 5} A safety plan was put into place. L.R. was prohibited from having any contact with appellant’s children. Appellant was required to participate in a parenting program and a non-offending parents’ group.

{¶ 6} In January 2011, Angelica Miller, the caseworker assigned to the children, identified several areas of concern. The caseworker’s primary concerns included the sexual abuse perpetrated by L.R., A.R.’s reported aggressiveness towards her siblings

(including threatening to kill her sister and attempting to drown her sister in the pool), and appellant's apparent inability to protect her children.

{¶ 7} In February 2011, LCCS received a referral alleging that A.R.'s cousin, an inhabitant in the family home, had sexually abused A.R. When questioned, A.R. reported that her cousin had kissed her on the lips and touched her private areas. Appellant did not believe the allegations to be true. The safety plan was amended to require mother to move herself and her children out of the family home. The children were prohibited from having any contact with the cousin.

{¶ 8} Appellant and her children moved out of the family home and into a homeless-family shelter. While at the shelter, appellant completed a non-offending care course. Upon completion of the course, however, the instructor recommended that appellant participate in individual therapy to address her daughter's sexual abuse.

{¶ 9} Despite the safety plan's no-contact orders, appellant continued to allow both the cousin and L.R. to have contact with the children. On one occasion, the caseworker personally observed L.R. with appellant and the children.

{¶ 10} LCCS received information that child molestation charges were pending against L.R. in Tennessee. L.R. confirmed the charges but denied the allegations.

{¶ 11} On May 11, 2011, appellant fled with L.R. and the children to Tennessee. Emergency temporary custody was awarded to LCCS. Minor warrants were issued for the children. Three weeks later, LCCS received detailed information about the family's whereabouts. Authorities in the commonwealth were contacted and local police officers

removed the children and placed them into emergency shelter care. Shortly thereafter, a maternal cousin drove to Tennessee to retrieve the children.

{¶ 12} Temporary custody was awarded to the maternal cousin and her husband in late June 2011. A.R. was adjudicated dependent, neglected, and abused. D.R. and Mc.R were adjudicated dependent and neglected. Mother stipulated to the grant of temporary custody and agreed the children would have no contact with L.R. until further order of the court. A case plan was established, the goal of which was reunification

{¶ 13} In July 2011, A.R. disclosed to her counselor that L.R. had sexually abused her. She also reported hearing voices instructing her to kill herself. Around the same period of time, A.R. disclosed to her caseworker that her father had penetrated her vaginally, anally, and digitally. A.R. indicated to her caseworker that she slept naked with her father in a tent while in Tennessee. A.R. further indicated that her parents had instructed her to lie and say that a male cousin, not her father, had sexually abused her.

{¶ 14} In the August 8, 2011 Semiannual Administrative Review, the caseworker reported appellant was in denial that any sexual abuse had occurred at the hands of L.R. She further reported that appellant continued to allow L.R. to have contact with her children. The caseworker expressed concerns about appellant's "plan to reunify their family" once appellant regained custody of the children.

{¶ 15} A family staffing was held September 9, 2011. Appellant, for the first time admitted to the caseworker that A.R. had been sexually abused by her father. Appellant

was referred to a non-offending parents group and informed she must demonstrate “protective capabilities” prior to reunification.

{¶ 16} Shortly thereafter, the maternal relatives indicated they were no longer able to care for A.R. because she was displaying threatening behavior towards other children in the home. Temporary custody of A.R. was awarded to LCCS. Temporary custody of the two youngest children remained with maternal relatives.

{¶ 17} On September 24, 2012, LCCS filed a motion to change placement and terminate temporary custody. In its motion, LCCS asserted that it was in the best interest of all three children to be placed with their mother. Shortly thereafter, however, a number of events occurred that prompted LCCS withdraw its motion. For example, in October 2012, appellant took A.R. on a dinner date with a man appellant had known less than 30 days. The man had not been cleared by LCCS, despite agency requirements that the man be approved for visits with the children before any contact with the children occurred.

{¶ 18} Thereafter, during one of her unsupervised visits with the children, appellant took the two youngest children to a house party. D.R. reported to the caseworker that a man was passed out on the couch and the house smelled of alcohol.

{¶ 19} In December 2012, D.R. fainted and had a seizure at school. She was transported by ambulance to the hospital. Appellant was informed of the medical event, yet did not visit D.R. in the hospital until the following day.

{¶ 20} In January 2013, relative caregivers for the two youngest girls indicated that they were no longer able to handle Mc.R. On February 5, 2013, LCCS filed a motion to change disposition regarding the two youngest children, requesting temporary custody. The trial court granted LCCS's motion. On April 29, 2013, LCCS filed a motion for permanent custody seeking to terminate the parents' parental rights. A hearing on the motion was held over three days in July and August 2013. The facts of this case were fully set out by the testimony and other evidence presented at the hearing.

{¶ 21} On September 18, 2013, the trial court awarded permanent custody of all three children to LCCS. In its decision, the trial court found that, "under R.C. 2151.141(B)(1)(a), the children cannot be placed with either parent within a reasonable time and should not be placed with either parent." The trial court further found that it was in the best interest of the children to grant permanent custody to LCCS.

{¶ 22} Appellant filed a timely appeal and sets forth the following assignment of error:

THE TRIAL COURT ERRED WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT PERMANENT CUSTODY OF AR, DR AND McR SHOULD BE AWARDED TO LUCAS COUNTY CHILDREN SERVICES.

{¶ 23} 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. 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, 342, 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).

{¶ 24} Before a trial court may terminate parental rights and award custody to a public children services agency, it must find clear and convincing evidence of both prongs of the permanent custody test that: “(1) * * * the children cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) the grant of permanent custody to the agency is in the best interests of the children, based on the factors set forth in R.C. 2151.414(D).” *In re J.H.*, 6th Dist. Lucas No. L-12-1344, 2013-Ohio-2598, ¶ 17.

{¶ 25} Appellant argues that the trial court erred when it held that LCCS had presented proof by clear and convincing evidence that R.C. 2151.414(E)(1), (4), and (14) were satisfied as to appellant.

{¶ 26} R.C. 2151.414(E) provides, in relevant part, as follows:

In determining * * * whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence * * * that one or more of the following exist as to each of the child’s parents, 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:

(1) 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.

* * *

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for 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.

{¶ 27} In regard to the trial court’s findings under R.C. 2151.414(E)(1), appellant argues that there was insufficient evidence to support a determination that appellant did not remedy the condition that caused the children to be placed outside the home.

{¶ 28} Before we begin our analysis under this section, we recognize that appellant’s argument is based on the flawed assertion that the children were removed from appellant’s home because of the alleged sexual contact between A.R. and her father. In fact, while the abuse clearly precipitated the LCCS referral, removal was triggered by appellant’s disbelief that “her boyfriend/the father of her children is the type of person who would” sexually abuse A.R., and appellant’s lack of insight as to how she continued to put her children at risk for abuse by allowing them to have contact with individuals who have a history of sexually offending behaviors, i.e., L.R. and A.R.’s maternal cousin.

{¶ 29} The trial court specifically held that appellant failed to remedy the conditions causing the removal “by her ongoing contact with [L.R.], her failure to effectively and adequately address the significant and extensive issues of her own sexual abuse and [A.R.’s] sexual abuse in spite of intensive and ongoing efforts of the therapists, and mother failed to adequately prepare a plan for the children about what they should and would do if [L.R.] further exposes himself to the family.”

{¶ 30} LCCS presented evidence that appellant admitted contact with L.R. after the children were removed from the home. In fact, she sent photographs of the children to L.R. depicting one of her visits with them.

{¶ 31} Caseworker Angelica Miller testified that every time A.R. tried to talk to appellant about the sexual abuse, appellant changed the subject. In her opinion, appellant had not made sufficient progress in the case plan services because she was not ready or willing to hear the details of A.R.'s abuse. Ms. Miller opined that the first time appellant became aware of the extent of her daughter's abuse was when details were admitted into evidence at the permanent custody hearing.

{¶ 32} Heidi Middlebrooks, a parent education caseworker for LCCS, began working with appellant in March 2012. Ms. Middlebrooks testified that appellant completed a 12-week parenting program and then took an extended parenting course for extra help. Despite appellant's completion of the parenting services, Ms. Middlebrooks testified that in her opinion, appellant did not have the ability to protect her children.

{¶ 33} Reka Monus, a clinical social worker, began working with appellant in December 2011. Ms. Monus testified that when she began working with appellant, appellant refused to believe that A.R. had been abused. At the time of the hearing, however, Ms. Monus believed that appellant had accepted that some sexual abuse had occurred. Ms. Monus did not know, however, whether appellant was aware of specific details surrounding the abuse.

{¶ 34} Angie Clark, a court appointed special advocate guardian ad litem, was appointed to the case in May 2011. Ms. Clark filed two reports in this case; the first in July of 2011, the second in July of 2013. Both reports were submitted to the court for consideration. The latest report indicates that all three children expressed a desire to go home with their mother and that appellant “loves and plays with” her children. Ms. Clark indicated, however, that in her opinion, appellant does not have the ability to protect her children. She recommended LCCS be granted permanent custody.

{¶ 35} The trial court specifically found that appellant’s “actions and contact with [L.R.] demonstrate her inability to protect her children and her inability for whatever reason to understand the gravity of the situation and the need to keep her children from him.” Construing every reasonable presumption in favor of the judgment and the findings of facts of the trial court, we find the trial court’s finding under R.C. 2151.414(E)(1) was not against the manifest weight of the evidence.

{¶ 36} In regard to the trial court’s findings under R.C. 2151.414(E)(4), appellant argues that there was insufficient evidence to support a determination that appellant demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with the children when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the children.

{¶ 37} In its opinion, the trial court held that appellant demonstrated a lack of commitment to the children by failing to report L.R. to the police when family members expressed concerns to her about potential abuse. The trial court further held that

appellant “placed her relationship with [L.R] and a boyfriend as a priority rather than avoiding relationships that were clearly unhealthy and likely to compromise the safety of her children.”

{¶ 38} The record is clear that appellant loves her children and regularly visited them throughout the case plan. She was committed to physically providing for them, but failed to demonstrate a commitment to the safety and welfare of her children. The latter of which, in this case, was necessary to demonstrate appellant’s willingness to provide an adequate permanent home. LCCS presented evidence that despite parenting and non-offender services appellant traveled to Tennessee with the man who was alleged to have had sexual contact with her daughter. Then, while in Tennessee, appellant provided insufficient supervision by allowing the man to sleep in the same tent with her daughter. Further, throughout the case plan, appellant continued contact with L.R. and expressed a desire to reunite her family once she regained custody of the children. Construing every reasonable presumption in favor of the judgment and the findings of facts of the trial court, we find the trial court’s finding under R.C. 2151.414(E)(4) was not against the manifest weight of the evidence.

{¶ 39} In regard to the trial court’s findings under R.C. 2151.414(E)(14), appellant argues that there was insufficient evidence to support a determination that appellant was 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.

{¶ 40} In its opinion the trial court held that appellant “demonstrated an unwillingness to provide the basic necessities to prevent the children from suffering physical or sexual abuse or physical, emotional or mental neglect by many of her actions.” The court stated

[Appellant] failed to cut off contact with [L.R.], even though knowing the concerns of the caseworker, the guardian ad litem, and other family members about [L.R.] sexually abusing [A.R.], and in spite of knowing that he was not making any efforts in case plan services or to effect return of the children. Mother also demonstrated an unwillingness to meet [A.R.’s] emotional needs by refusing to process the full extent and serious nature of the sexual trauma [A.R.] suffered by [L.R.].

{¶ 41} The case plan required appellant to complete parenting classes, attend mental health counseling, and maintain housing and employment. Appellant did all of these things. Yet, when A.R. tried to talk to appellant about the abuse, appellant would change the subject of conversation. From the caseworker’s perspective, appellant was not ready to hear the details of the abuse and unable to meet the emotional needs of her daughter.

{¶ 42} Aaron Cromly, a clinical counselor, testified he began treating A.R. because of significant acting out issues, sexual behaviors, aggressive behaviors, and suicidal and self-harming behaviors. Mr. Cromly hypothesized that many of A.R.’s trust issues were rooted in the trauma A.R. experienced because the adults in her life did not

believe that sexual abuse had occurred. Mr. Cromly indicated that he had 15 individual meetings with appellant and four or five joint meetings with appellant and A.R. At the time of the hearing, Mr. Cromly was concerned about appellant's ability to provide an environment with "very clear boundaries" and her ability to provide a nurturing and caring environment.

{¶ 43} Angelica Miller, the LCCS caseworker, testified that despite her requests, appellant was unable to verbalize a plan to keep her children safe from sexual abuse. When asked why LCCS was seeking permanent custody, the caseworker explained that she believed permanent custody was in the children's best interest because appellant has "poor judgment" and she "continues to make poor decisions regarding the children's safety." The caseworker indicated that all three girls love appellant and want to be with her. However, two of the three children expressed concerns to her about whether appellant could keep them safe.

{¶ 44} Construing every reasonable presumption in favor of the judgment and the findings of facts of the trial court, we find the trial court's finding under R.C. 2151.414(E)(14) was not against the manifest weight of the evidence.

{¶ 45} To satisfy the best interest prong of the permanent custody test, LCCS was required to establish, by clear and convincing evidence, that an order of permanent custody to the agency is in the best interest of the children based on an analysis under R.C. 2151.414(D). In so doing, the trial court must consider all relevant factors, including those enumerated in R.C. 2151.414(D): the interaction and interrelationship of

the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers; the wishes of the children; the custodial history of the children; and the children's need for permanence.

{¶ 46} Here, the trial court's judgment entry reveals that the court considered, in detail, all the enumerated factors in R.C. 2151.414(D). In regard to the children's interrelationship with each other, the evidence is clear that A.R. has been physically aggressive towards her siblings, her foster mother, and other children at school. A.R. also has issues with sexual boundaries. Evidence was presented that appellant purchased inappropriate clothing for A.R. and allowed A.R. to wear inappropriate make-up for a child of her age, maturity level, and history.

{¶ 47} Evidence was presented that despite a history of aggressiveness, A.R., D.R. and Mc.R. have a bond with each other and enjoy visiting each other.

{¶ 48} In regard to the children's interrelationship with their mother, the caseworker testified she did see a bond between appellant mother and children at visitations. However, appellant has refused to address the full extent of A.R.'s trauma.

{¶ 49} In regard to custodial history, a relative placement was attempted; however the children were placed in foster care when the relative placement was unable to handle the children's behaviors. All evidence indicates that A.R. bonded well with her foster care provider and that all of the children struggled with the changes in custody. Both the caseworker and the guardian ad litem testified that permanent custody of the children and

termination of appellant's rights are in the children's best interest. Construing every reasonable presumption in favor of the judgment and the findings of facts of the trial court, we find the trial court's finding under the best interest prong was not against the manifest weight of the evidence.

{¶ 50} Appellant's assignment of error is found not well-taken.

{¶ 51} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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, J.

JUDGE

James D. Jensen, 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>
