[Cite as *In re J.R.*, 2014-Ohio-2317.]

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

In re J.R.

Court of Appeals No. F-13-015

Trial Court No. 17182

DECISION AND JUDGMENT

Decided: May 27, 2014

* * * * *

Christopher P. Dreyer, for appellant, A.C.

Todd B. Guelde, for appellant J.P.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment issued by the Fulton County Court of Common Pleas, Juvenile Division, terminating appellants' parental rights and granting permanent custody of their minor child to appellee, Fulton County Department of Jobs and Family Services. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant, A.C., is the biological mother of J.R. and appellant, J.P., is the child's biological father. J.R. was born in 2010. On May 11, 2011, appellee filed a complaint alleging abuse, dependency and neglect of J.R. The complaint alleged that appellee received a referral that mother and J.R. were residing with mother's grandmother and that both mother and her grandmother were "shooting up heroin" in front of J.R. Appellee initially failed to locate mother. A month later, she was arrested for outstanding warrants and taken to jail. The arresting officers found drug paraphernalia in J.R.'s diaper bag. Mother left J.R. in the custody of J.R.'s maternal grandmother following her arrest. Maternal grandmother, however, reported that she had no income, no permanent residence and a significant drug history.

{¶ 3} J.R.'s father had recently gotten out of prison and was facing two pending sex abuse cases from Wood County. A medical check of J.R. showed that he was suffering from a skin condition related to poor hygiene and that he was malnourished. Following the complaint, temporary custody of J.R. was given to appellee.

{¶ 4} On April 12, 2013, appellee filed a motion for permanent custody of J.R. The motion was granted on October 4, 2013. From this judgment, appellants now bring this appeal.

{¶ 5} Appointed counsel for appellants have each filed briefs pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), seeking leave to withdraw as counsel.

{¶ 6} In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous counsel should so advise the court and request permission to withdraw. *Id*. at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. *Id*. Counsel shall also furnish the client with a copy of the request to withdraw and its accompanying brief, and allow the client sufficient time to raise any matters that the client chooses. *Id*. 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*. Although *Anders* is normally reserved for appointed counsel in criminal matters, we have held that it is also applicable for counsel appointed in termination of parental rights cases. *Morris v. Lucas Cty. Children Servs. Bd.*, 49 Ohio App.3d 86, 87, 550 N.E.2d 980 (6th Dist.1989).

{¶ 7} Both appointed counsel have met the bare minimum requirements set forth in *Anders*. Appellants did not file a brief. As a potential assignment of error, both counsels broadly contend that the award of permanent custody of J.R. to appellee was not supported by clear and convincing evidence. Counsel has not, however, cited to any specific factual findings that potentially have merit. Accordingly, this court shall proceed to examine the potential assignment of error set forth by counsel and the entire record below to determine whether this appeal lacks merit rendering it wholly frivolous.

{¶ 8} At the permanent custody hearing, case worker, Jackie Wallischeck testified that she was assigned to J.R.'s case in May, 2011. Mother's case plan goals were for her to participate in drug treatment, take parenting classes, maintain employment and establish stable housing.

{¶ 9} As for the drug treatment, Wallischeck testified that mother would initially attend the assigned programs but ultimately would not complete the requirements of the programs. She frequently tested positive for drugs while in treatment. Although she claimed to have valid prescriptions, she failed to produce them. In one instance, she was returned to prison for selling drugs in a treatment facility. Throughout appellee's involvement with mother, she has been in and out of jail for or accused of various drug and theft offenses involving eight Ohio counties.

{¶ 10} Wallischeck testified that mother attended a "handful" of parenting classes but she failed to attend the required amount. She was employed by two different restaurants, but only for a short period of time. Wallischeck described mother's employment situation as unstable. With regard to housing, Wallischeck testified that mother moved several times throughout the two year history of the case, that is, when she wasn't incarcerated. Her housing consisted of a homeless shelter, a friend's house, her mother's house, her grandmother's house, a rental house and a hotel.

{¶ 11} Wallischeck testified that mother's attendance for scheduled visitation with J.R. was sporadic. She often blamed her problem on a lack of transportation, despite the fact that appellee offered her transportation and offered to bring J.R. to her. In all, she

arrived on time for 22 of her scheduled 83 visits. Finally, Wallischeck testified that mother voluntarily chose to not appear at the permanent custody hearing.

{¶ 12} Wallischeck testified that father's case plan was the same as mother's. During appellee's involvement with this case, father was arrested for theft, drug possession, escape and tampering with evidence. At the time of the permanent custody hearing, father was serving prison time for unlawful sexual conduct with a minor. His scheduled release date is July, 2015. Before his incarceration, his attendance for scheduled visits with J.R. was sporadic. He did not attempt to complete his case plan goals. According to Wallischeck, father admitted he failed to complete his case plan goals because "he had already been getting into trouble at that point and knew he wasn't gonna get his son back."

{¶ 13} J.R.'s paternal grandmother, a resident of Marietta, Ohio, was investigated as a possible placement option for J.R. She and the three-year-old J.R. had never met in person. She was rejected as an option because she lied about having her own history with two different children's services agencies and because she was currently housing her other young grandchildren.

{¶ 14} Adam Tracy testified that he and his wife have served as J.R.'s foster family since the beginning of the case, when J.R. was 11 months old. J.R. refers to them as "mom" and "dad." Also in the home are four adopted children and two biological children. Tracy testified that J.R. is enrolled in the Head Start program and progressing well. Tracy testified that he and his wife are interested in adopting J.R.

{¶ 15} 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. Franklin 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. Franklin 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.

{¶ 16} 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.

{¶ 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} 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, 793, 742 N.E.2d 663 (10th Dist.2000).

{¶ 19} In its judgment entry granting appellee permanent custody, the court found that there was clear and convincing evidence, pursuant to R.C. 2151.414(B)(1), that it was in the best interest of J.R. to grant permanent custody to appellee and that J.R. had been in the temporary custody of appellee for 12 or more months of a consecutive 22 month period. R.C. 2151.414(B)(1)(d).

{¶ 20} The court noted mother's substance abuse history, both mother and father's criminal records, their inconsistent attempts at visitation with J.R. and, J.R.'s lack of a relationship with paternal grandmother versus his current success with his foster parents. The court declined to interview J.R. to determine his wishes because of his young age of three. The court cited, however, the guardian ad litem's recommendation that permanent custody be granted to appellee. Regarding J.R.'s need for a legally secure permanent placement, the court stated:

> [f]oster father testified that if the child were eligible to be adopted that his family would adopt him and not have his placement disrupted. Without a grant of permanent custody the child would continue to be in a state of limbo, dealing with visitation issues, and without a legally secure placement.

{¶ 21} The court further found, pursuant to R.C. 2151.414(E)(7), that father had been convicted of unlawful sexual conduct with a minor. Citing R.C. 2151.414(E) (9), the court found that mother consistently abuses drugs and alcohol and, citing R.C. 2151.414(E)(10), the court found that father has abandoned J.R. due to his incarceration.

{¶ 22} Based on the foregoing, we find that the trial court's decision was supported by clear and convincing evidence. Accordingly, counsels' potential assignments of error are without merit.

{¶ 23} Upon our own independent review of the record, we find no grounds for a meritorious appeal. Counsels' motions to withdraw are found well-taken and are granted granted.

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

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P. J. _____
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of
Ohio's Reporter of Decisions. Parties interested in viewing the final reported
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