

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: M. L.

C. A. No. 24585

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 07-01-24

DECISION AND JOURNAL ENTRY

Dated: June 10, 2009

WHITMORE, Judge.

{¶1} Appellant, Tracy DeVaughn (“Mother”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child and placed the child in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I

{¶2} Mother is the natural mother of M.L., born May 30, 2001. The child’s father is not a party to this appeal, nor is her older half-sibling who is in the legal custody of his father. On January 4, 2007, M.L. was removed from the home pursuant to Juv.R. 6 because Mother had overdosed on prescription medication and M.L.’s father was incarcerated. The complaint further indicated that the home was filthy, had little food, and that Mother had a history of mental health issues. CSB also had been in the process of investigating prior allegations of physical abuse by Mother. M.L. was later adjudicated a dependent, neglected, and abused child.

{¶3} Because CSB became involved with this family due to Mother's drug abuse, the primary goal for reunification was for Mother to achieve and maintain sobriety. During the first three months of the case planning period, however, Mother refused to submit to a chemical dependency assessment and failed to submit urine samples for regular drug screening. CSB presumes that a parent is using drugs or alcohol when she fails to submit to required drug screening.

{¶4} During April 2007, Mother tested positive for methamphetamines. On July 17, 2007, Mother was indicted on charges of possession of OxyContin and her criminal case was diverted to the felony drug court program. The drug court program allowed Mother to complete drug treatment in lieu of incarceration, provided she complied with the requirements of the program. From the beginning, Mother had difficulty complying with the requirements of the drug court program. She was terminated from her initial intensive outpatient treatment program due to excessive absences. On November 1, 2007, Mother tested positive for cocaine, opiates, and benzodiazepines. After serving some jail time for violating the conditions of the drug court, Mother entered a residential drug treatment program. She completed that program approximately 90 days later, but failed to appear for her first scheduled aftercare session, so the criminal court ordered her to complete a 90-day half-way house program. Mother was later terminated from the half-way house program for repeatedly testing positive for drugs.

{¶5} On August 1, 2008, after nineteen months of Mother failing to control her drug problem, CSB moved for permanent custody of M.L. Mother eventually completed a half-way house program on November 10, 2008, but then failed to appear for her case management meeting and failed to attend aftercare. At the time of the permanent custody hearing, Mother had not completed the felony drug court program. Although she had submitted negative drug screens

for approximately one month, the felony drug court program required her to demonstrate abstinence for four months. Mother's juvenile court parenting assessment required that she demonstrate sobriety for at least six months outside of a controlled environment to satisfy the case plan goal of achieving sobriety.

{¶6} Following a hearing on the permanent custody motion, the trial court found that M.L. had been in the temporary custody of CSB for more than 12 of the prior 22 months and that permanent custody was in her best interest. Consequently, it terminated Mother's parental rights and placed M.L. in the permanent custody of CSB. Mother appeals and raises one assignment of error.

II

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED IN FINDING THAT IT WAS IN THE CHILD’S BEST INTEREST TO PLACE M.L. IN THE PERMANENT CUSTODY OF [CSB], AS THE DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶7} Mother maintains that the trial court's permanent custody decision was not supported by the evidence. Before a juvenile court can terminate parental rights and award to a proper moving agency permanent custody of a child, it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of the prior 22 months, or that the child 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 interest of the child, based on an analysis under R.C. 2151.414(D). See R.C. 2151.414(B)(1) and 2151.414(B)(2); see, also, *In re William S.* (1996), 75 Ohio St.3d 95, 99.

{¶8} The trial court found that the first prong of the permanent custody test was satisfied because M.L. had been in the temporary custody of CSB for more than 12 of the prior 22 months and Mother does not contest that finding. Mother challenges only the best interest prong of the permanent custody test. When determining whether a grant of permanent custody is in the children's best interests, the juvenile court must consider all the relevant factors, including those enumerated in R.C. 2151.41.4(D): the interaction and interrelationships of the children, the wishes of the children, the custodial history of the children, and the children's need for permanence in their lives. See *In re S.N.*, 9th Dist. No. 23571, 2007-Ohio-2196, at ¶27.

{¶9} During the 23 months that M.L. had been living away from Mother, the interaction between the two had been limited to supervised visitation due to Mother's ongoing drug problem. Mother missed approximately six months of visits due to her incarceration, although she wrote letters and made phone calls to M.L. during that time. The foster family had also allowed Mother to have some extra visits with M.L. under their supervision. Several witnesses testified that they believed that Mother and M.L. loved each other.

{¶10} Despite their love for each other, there was evidence that M.L.'s exposure to Mother's drug abuse had seriously impacted the child. M.L.'s counselor explained that, during the first five years of her life while residing with Mother, M.L. had been exposed to Mother's ongoing drug use, including the drug overdose that led to the child's removal from the home. M.L. was too young to understand Mother's drug problem and referred only to the "bad medicine" that her Mother would often take. M.L. recounted to her counselor that Mother would usually be lying on the couch and she often did not make meals for her. M.L. was still troubled by an incident during which Mother woke up and started screaming at her because she had

spilled cereal all over the kitchen while trying to find herself dinner. The counselor explained that M.L. missed her mother, but she had not felt safe living in her care.

{¶11} M.L. initially had been referred to counseling due to suspicions by the foster family that she been sexually abused, but the counselor had been unable to either substantiate or rule out sexual abuse. She was able to confirm that M.L. had been exposed to sexual behavior in some manner because the young child demonstrated sexual intercourse with dolls. The counselor further testified that M.L. had been exposed to horror movies while living with Mother and that she still had nightmares about them.

{¶12} Mother had admitted to her counselor that her long history of drug use impaired her ability to parent her children. The counselor opined that Mother had poor insight into how her drug use affected her daily life, however, because she was too focused on her own needs. The counselor described Mother as manipulative, irresponsible, and impulsive, and explained that she tended to put her own needs ahead of those of M.L.

{¶13} M.L.'s counselor believed that Mother and M.L. needed joint counseling to work through the problems in their relationship, so she invited Mother to participate in counseling with M.L. When Mother responded to the counselor's letter six months later, however, the counselor's sessions with M.L. had almost come to an end, so there were no joint sessions with Mother and M.L. with that counselor. Mother testified that she and M.L. were participating in counseling through another program, but she offered few details about the program beyond her own brief testimony.

{¶14} The trial court concluded that M.L. was not sufficiently mature to express her own wishes about where she wanted to live. M.L.'s counselor, who had counseled M.L. for approximately 25 sessions, testified that M.L. lacked the maturity to decide what was best for her

in this situation. The counselor explained that M.L. was conflicted about whether she would prefer to live with her mother or stay in the foster home and that the child lacked the ability to choose between the two. Accepting the counselor's opinion, the trial court allowed the guardian ad litem to speak on behalf of M.L. The guardian ad litem recommended permanent custody and opined that adoption would be in the best interest of M.L. The guardian focused on Mother's long history of abusing drugs and her inability to maintain sobriety for a sustained period.

{¶15} M.L.'s custodial history included two years spent living away from her mother. By the time of the permanent custody hearing, M.L. had spent 22 months in the temporary custody of CSB, and during that time, Mother had yet to maintain sobriety for more than one month. M.L. spent the first five years of her life in Mother's custody, where she was exposed to Mother's ongoing drug use, as previously detailed.

{¶16} On the final best interest prong, Mother maintains that the trial court erred by failing to find that permanent custody was the only permanent placement available in this case. Mother relies on reasoning from *In re G.N.*, 176 Ohio App.3d 236, 2008-Ohio-1796, which has never been followed by this Court and is currently pending before the Ohio Supreme Court on a certified conflict. See *In re M.M.*, 121 Ohio St.3d 1407, 2009-Ohio-805. Moreover, given that Mother fails to point to any evidence in the record that there was another suitable permanent placement available in this case; she has failed to demonstrate any error by the trial court.

{¶17} The evidence demonstrated that Mother's unresolved problem with substance abuse prevented her from providing a suitable home for M.L. at the time of the hearing or anytime in the near future. CSB also presented evidence that it had been unable to find any relatives who were willing and able to provide M.L. with a suitable permanent home.

{¶18} M.L.'s counselor testified that M.L. was in need of a home environment that was consistent, predictable, and highly structured, more so than a typical seven-year-old child. The evidence further demonstrated that the foster parents provided M.L. with a very structured environment and that the child was doing well in their care. The foster parents had expressed a desire to adopt M.L. and provide her with a permanent home. The trial court reasonably concluded that a legally secure permanent placement could be achieved by terminating parental rights and placing M.L. in the permanent custody of CSB.

{¶19} The trial court had ample evidence before it to support its conclusion that permanent custody was in the best interest of M.L. Mother's assignment of error is overruled.

III

{¶20} The assignment of error is overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

EMILY M. HETE, Attorney at law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.