[Cite as *In re C.L.*, 2009-Ohio-5758.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

IN RE: C. L. A. L.	C.A. No. 09CA0042
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO CASE Nos. 08-0357-PCU 08-0359-PCU

DECISION AND JOURNAL ENTRY

Dated: November 2, 2009

BELFANCE, Judge.

{¶1} Appellant, Marie L. ("Mother"), appeals from a judgment of the Wayne County Court of Common Pleas, Juvenile Division, that terminated her parental rights to two minor children, C.L. and A.L., and placed them in the permanent custody of Wayne County Children Services Board ("CSB"). This Court affirms.

FACTS

{¶2} Appellant is the mother of two children: C.L., born March 23, 2002, and A.L., born January 16, 2006. Dean L. is the father of C.L. and Edward K. is the father of A.L. Each of these men voluntarily surrendered his parental rights, and neither is a party to this appeal.

{¶3} CSB, through caseworker Martha Jackson-Hill, initially became involved with this family on a voluntary basis in 2004, and focused on helping the parents provide a safe and clean living environment for C.L. After 18 months of attempting to work with the family on a

voluntary basis, CSB obtained an order of protective supervision and continued working with the family on the same issues. A.L. was born in January 2006. Shortly thereafter, the agency learned that the water was being shut off and the family was being evicted. Because of those conditions, in April 2006, Ms. Jackson-Hill went to the home with a police officer and both children were removed pursuant to Juv.R. 6.

{¶4} CSB immediately filed complaints in juvenile court, but the actions were dismissed for failure to proceed. On July 10, 2006, the agency re-filed the actions, alleging that the children were dependent and seeking temporary custody. The matter proceeded to adjudication and disposition, where the children were adjudicated dependent and placed in the temporary custody of CSB.

{¶5} The trial court adopted a case plan which required the parents to maintain regular contact with their children; participate in Help Me Grow, a specialized parenting program; maintain a clean and safe home, with the assistance of a cleaning program; and follow the recommendations from the family assessment, including individual counseling, parenting classes, and case management services through MRDD.

{¶6} Eventually, on April 3, 2009, CSB moved for permanent custody of the children. Following a hearing, the trial court granted CSB's motion for permanent custody, concluding that the children had been in temporary custody for at least 12 of a consecutive 22-month period and that it was in the best interest of the children to be placed in the permanent custody of CSB. Mother timely appeals and assigns one error for review.

BEST INTEREST OF THE CHILDREN

{¶7} In her sole assignment of error, Mother argues that the trial court incorrectly found that the evidence clearly and convincingly supported a finding that permanent custody was

in the best interest of the children. In specific, she argues that the trial court made a number of findings of fact that are not supported by the record or fail to reflect the actual testimony of the witnesses. We will address those arguments as they relate to the best interest factors of the permanent custody test.

{¶8} Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency 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 a consecutive 22-month period, 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) that 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.

{¶9} The trial court found that the first prong of the permanent custody test was satisfied because the children had been in the temporary custody of CSB for at least 12 of the prior 22 months. Mother does not contest that finding. She challenges only the finding on the best interest prong of the permanent custody test. In determining whether a grant of permanent custody is in the children's best interest, the juvenile court must consider: (1) the children's personal relationships and interactions; (2) the children's wishes regarding placement; (3) the custodial history of the children; (4) whether there are appropriate alternatives to permanent custody; and (5) whether any of the factors in R.C. 2151.414(E)(7) to (11) apply. R.C. 2151.414(D). Mother's arguments are all directed to the first best interest factor.

PERSONAL RELATIONSHIPS

{¶10} Mother's first argument is in regard to the trial court's finding on the bond between Mother and C.L. The trial judge included the following among his reasons for the determination that permanent custody was in the best interest of the children:

> "1. Although there is a bond between mother and her children, the counselor for [C.L.] and Dr. Bowden testified that it is not a natural bond, at least for [C.L.]. It is more based upon what mother can provide for [sic] from [C.L.'s] point of view rather than a parent/child bond.
>
> "* * *
>
> "4. While mother has attended the majority of visitations and interacts with the children, the bond between mother and her children is more of a peer than a parent/child relationship."

Mother's complaint is that, in reaching this conclusion, the trial court relied on the testimony of two witnesses who did not observe Mother and her son interacting together. Mother also claims that it is unclear what the judge meant by describing her bond with C.L. as not natural.

{¶11} The record includes the following evidence. Dr. Marianne Bowden, the psychologist who conducted the assessment of Mother, explained that Mother verbalized that she cared about C.L., but testing revealed that Mother's relationship with C.L. was "fairly shallow" and that her attachment to her son was "not a very strong" one. Holly Alexander, C.L.'s therapist, testified that C.L. was bonded to his parents in the sense that "he gets to see them, he knows who they are, he enjoys being with them, playing with them, doing things with them, but I'm not sure that it's as much as a parental bond as it is just a bond that he gets to see them." Finally, the caseworker testified that Mother shares a bond with her children, but it resembles that of a peer rather than that of a parent. The caseworker further stated that C.L's bond with his parents seemed to be largely based on the tangible objects he obtained from them. The caseworker then described C.L.'s relationship with his parents as "an unhealthy kind of a bond."

In regard to A.L., the caseworker stated that A.L. knew who her mother was, but looked more to the foster mother for security and comfort.

{¶12} It is true that Dr. Bowden and Counselor Alexander did not observe Mother and C.L. together, but that was not part of their assigned obligations under the case plan. These professionals appear to have operated within the scope of their respective roles and were entitled to draw the conclusions they did. Dr. Bowden's testimony was based on her utilization of standardized testing protocols in personal meetings with Mother and C.L. for the purpose of preparing psychological assessments of each of them. She utilized those procedures in concluding that Mother's relationship with C.L. was not strong, but was instead a shallow bond. Similarly, Counselor Alexander's testimony was based on her counseling sessions with her client, C.L. Based on those sessions, she concluded that C.L. enjoyed seeing and playing with Mother, but that their relationship was more of a peer relationship and not really a parental bond. Caseworker Jackson-Hill did observe the family members interacting together at home and at visitation sessions, and she described C.L.'s attachment to his parents as "unhealthy." The findings of the trial court are supported by the evidence of record. Mother has failed to demonstrate any error in the fact that two witnesses did not observe Mother and C.L. interacting together.

{¶13} As to Mother's other point, there was no explicit testimony that the bond was not "natural." Nevertheless, the clear import of the trial judge's finding was that the bond between Mother and her son was not a positive, healthy parent-child bond. The record decidedly supports such a conclusion. Accordingly, there is no demonstration of error or prejudice in this argument.

{¶14} Mother next appears to dispute the trial court's reliance on Dr. Bowden's opinion that it would be difficult for Mother to effectively parent her children, particularly her son, due to

a disparity in their respective I.Q.'s. As demonstrated below, there was an abundance of evidence that supported the trial court's conclusion that Mother was "not likely to be able to parent [C.L.]."

{¶15} Dr. Bowden diagnosed Mother with an adjustment disorder with depressed mood, mild mental retardation, and a dependent personality disorder. According to Dr. Bowden, Mother's I.Q. is 63, equating to mild mental retardation, and she functions at the level of a second grader. Dr. Bowden explained that this means it is virtually impossible for Mother to think on an abstract level, learn new tasks, or use adequate judgment in parenting a child.

{¶16} Dr. Bowden also conducted an assessment of C.L. She diagnosed the child with an adjustment disorder with mixed disturbance of emotions and conduct; attention deficit/hyperactivity disorder, combined type; and oppositional defiant disorder. The first diagnosis indicates that the child demonstrates symptoms of anxiety and depression and acts out. The second diagnosis indicates that he has great difficulty focusing his attention and is hyperactive. The third diagnosis indicates that C.L is very defiant in dealing with other people. Dr. Bowden testified that despite an I.Q. of 107, C.L. was doing poorly in school and his emotional maturity was that of a three or four-year-old.

{¶17} Based on these assessments, Dr. Bowden concluded that it would be very difficult for someone with Mother's level of mental ability to parent any child, but particularly a child who is more intelligent than she is and one who has C.L.'s behavioral problems. Dr. Bowden observed that if C.L. were returned to Mother, he would likely become a caretaker for Mother and his younger sibling. He would likely suffer the consequences of poor supervision by his parent, due to her lack of good judgment and insight. On cross-examination, Dr. Bowden reiterated that it would be extremely difficult, even "highly improbable," for individuals with this

level of mental retardation to raise their children independently, i.e., without the assistance of capable, supportive families.

{¶18} Suzanne Huse of Help Me Grow also provided relevant testimony on Mother's parenting ability. She had an opportunity to observe Mother and her children together. She believed Mother's understanding of proper child care was limited, and also that Mother was not receptive to her parenting suggestions. In specific, she noted that Mother either did not respond at all or did not respond appropriately to the needs of A.L. Sometimes Mother would ignore her baby's cries and send text messages on her cell phone instead. And when Mother did respond, she invariably responded to any crying by attempting to feed the baby.

{¶19} Caseworker Jackson-Hill testified that C.L. did not receive adequate or consistent care from Mother while he was in her custody. Importantly, Mother would sometimes nap while the child was awake and leave him unsupervised, creating a dangerous situation. During visitations, Mother had a difficult time with C.L. because he was so demanding. He would wear her down and Mother would just let him have his own way.

{¶20} The guardian ad litem was able to testify that C.L. reacted to his foster mother with respect, seeking her approval and permission. The child exhibited some improvement while in her care, but, by all accounts, he was a difficult and demanding child.

{¶21} Mother next complains that the "mental condition" of the parents was not mentioned at the time of the original removal of the children. The immediate reason for the removal of the children was not, in fact, the parents' mental condition or their mental health. The children were removed because of the unsafe condition of the home and the continued failure of Mother to maintain a home that was safe and hazard-free despite nearly two years of assistance from a caseworker, a cleaning company, and a provider from Help Me Grow. Given

that history, CSB had reason to attempt to determine and address the underlying causes of the problem. The trial court adopted a case plan that included a family assessment by a psychologist and compliance with her recommendations, which included individual counseling, parenting classes, and case management services through MRDD. At that point, the question of Mother's ability to remedy the conditions that caused her children to be removed became an appropriate issue for the consideration of the court.

{¶22} Mother next argues that there was evidence before the trial court that she could provide a safe and stable home for her children, in apparent distinction to the trial court's finding that "for almost three years, mother has been unable to provide a stable and safe home for the children despite repeated attempts by four different organizations to provide assistance and instruction."

{¶23} In support of her claim, Mother very selectively chooses three pieces of testimony from the record. First, she claims Ms. Huse of Help Me Grow testified that Mother could provide a safe environment for her children. Our review of the record reveals that Ms. Huse testified that Mother was "capable" of doing so "three years ago," but that she "couldn't say for today." Furthermore, Ms. Huse emphasized that Mother never did provide a safe environment for children in the entire time she worked with her, nor was Mother receptive to her suggestions.

{¶24} Next, Mother notes that Deborah Dunlap, the service coordinator for MRDD, testified that she saw Mother's home when it was appropriate. Ms. Dunlap did testify that Mother's apartment was nice and neat on one of the occasions she visited her home, but that was not true on any of Ms. Dunlap's other visits, nor was it generally true for any of the other witnesses who visited the home on numerous occasions both before and after the children were

removed. Mother was very inconsistent and the record establishes that she could not keep her home clean and safe for any lengthy of time.

{¶25} Mother also claims that Ms. Dunlap visited Mother's home and had "not observed anything that caused her concern regarding [Mother's] parenting skills[.]" The testimony was in regard to a single, brief visit during which Ms. Dunlap took a gift to the home shortly after A.L. was born. Ms. Dunlap was asked whether Mother did anything with either child during that visit to cause concern with respect to her parenting skills. Ms. Dunlap's response was: "Not during that time." Unfortunately, none of the attorneys attempted to clarify this response. Ms. Dunlap also explained that her general responsibilities as an MRDD service provider included helping with housing applications and obtaining benefits, such as Medicaid cards and food stamps. Ms. Dunlap did not testify that she was particularly involved with addressing Mother's parenting skills.

{¶26} Third, Mother pointed to the testimony of Cheryl Moore, a visitation aide,[1] to the effect that "she did not observe anything during these visits that caused her concern with respect to [Mother's] parenting ability[.]" Ms. Moore did so testify, but she also explained that Mother tended to spend her time holding baby A.L., while Dean L. spent his time with C.L. Ms. Moore specifically stated, therefore, that she could not describe Mother's ability to parent C.L. In addition, Ms. Moore, who later worked with Mother as a homemaker help aide, testified that she believed Mother's home was not safe for children because of the small items lying around, prescription medicines accessible to children, and extreme amount of clutter. She also pointed out that she gave Mother step-by-step directions and assigned specific homemaking tasks to her, which Mother generally failed to complete.

{¶27} In sum, these examples do not overcome the abundance of testimony that supports the trial court's conclusion that Mother has been unable to provide a stable and safe home for the children.

{¶28} Last, Mother argues that she completed most, if not all, of her case plan objectives. This claim is not supported by the record. Kristine Burris, Mother's parenting instructor, testified that Mother attended enough classes to obtain a certificate and was cooperative during classes, but her progress was not significant. Mother participated in individual counseling for a couple months and her attendance then became very sporadic until her case was closed in April 2008. Marital counseling was started, but was not completed.

{¶29} Housing, too, remained an unresolved concern, and the trial judge found that Mother was unable to apply what she had been told about cleaning. Mother changed her residence ten times since the removal of the children and had continuing problems with the loss of utility service and evictions. Before the removal of the children, Elite Cleaning service was brought in to help the family in 2004 and 2005. They reported the presence of hazardous materials, such as tacks in the floor and accessible knives.

{¶30} At the time of the children's removal in April 2006, the caseworker described the home as "almost unimaginable." She stated:

> "There was trash, dirt, [and] clutter[.] * * * [I]t looked as though things had been drug in from when people put garbage out for the day, [such as] all sorts of car engines, coke machines, these were discarded things that you wouldn't have in a home. Food all over the place[.] * * * [T]here were [gnats] flying about * * * [and] standing dishwater in the sink with dirty dishes in it[.] [The]house had a foul odor. Going up the stairs there was debris and trash and everything[.] * * * [I]t looked as though the house hadn't been swept * * * [or] picked up in months."

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[1] Mother incorrectly identifies this witness in her brief. Based on the transcript page cites and the language used, the testimony came from witness Cheryl Moore.

Suzanne Huse, of Help Me Grow, described the house at about the same time. She said the house was so cluttered there was no place to sit down. The kitchen trash can was overflowing and the sink was full of dirty dishes. According to her, there were dirty diapers and other things all over the living room floor with only one tiny spot cleared in the center of the room for infant A.L.

{¶31} The caseworker also described C.L. as being very unkempt, and his daycare provider reported that he often looked as though he had not bathed in days. He had dirty clothing, and even had feces in his underwear and on his blanket.

{¶32} On later visits, the caseworker observed hazards such as wires and other items lying across the floor and up the stairs. Jan Higgins, another aid from Help Me Grow, described the home in August 2007. In addition to stacks of clutter all along the walls, there were lots of dirty dishes, dirty clothing, and standing water in a waste basket. She described the home as being neither child-proofed nor safe.

{¶33} The homemaker aid described the home in mid-2008. She said it was extremely cluttered with piles of books, clothing, bedding, papers, magazines, toys, computers, and movies. She also expressed concern about the safety of the home for small children because of small items lying around.

{¶34} In general, the caseworker said she did not believe Mother could provide for her own needs, much less those of her children. Ms. Dunlap, the MRDD service provider, testified that Mother kept appointments when she was motivated, but also provided several examples of Mother's lack of follow through. For example, Ms. Dunlap explained her efforts to help Mother through three stages of an application process for low-cost housing, only to have Mother fail to show up for the lease signing on two separate occasions, resulting in a revocation of her contract.

As to visitation, Mother attended the vast majority of her visits, but never progressed beyond supervised status.

WISHES OF THE CHILDREN

{¶35} Mother does not dispute the trial court findings on the remaining best interest factors. The evidence established that C.L. did not express a consistent wish as to where he wanted to live, and the psychologist and C.L.'s therapist both testified that he was, in any event, too immature to make a thoughtful decision. A.L., at three years of age, was too young to express any opinion. On behalf of both children, the guardian ad litem testified that permanent custody was in their best interest.

CUSTODIAL HISTORY

{¶36} C.L. lived with Mother for two years before CSB became involved with the family and another two years with CSB involvement on a voluntary basis and then with protective supervision. Shortly after A.L. was born, both children were removed from the home, and they each spent nearly three years in foster care. They lived in four different foster homes during that time period.

{¶37} The parents were offered visitation twice weekly for two hours each, initially on-site and then off-site, but always supervised. Mother attended the vast majority of the 300 scheduled visits over the course of three years.

ALTERNATIVES TO PERMANENT CUSTODY

{¶38} Counselor Alexander believes that C.L. needs stability and would benefit from a permanent placement. Psychologist Bowden similarly testified that C.L. is young and requires a permanent placement. She believes that it would be in the best interest of C.L. to be adopted. Caseworker Jackson-Hill testified similarly that both children need security and permanence for

their future. She did not believe that Mother would be able to meet their basic needs anytime in the near future.

{¶39} CSB believes the children, who share a strong bond, are adoptable and can achieve permanence through adoption. Possible placements with two relatives were explored, but were unsuccessful. A possible placement of both children with the maternal grandfather arose near the end of the proceedings and was said to be promising. According to the caseworker, the grandfather would like to adopt both children, but he was not interested in pursuing legal custody.

{¶40} In summary, Mother has argued that the trial court erroneously made several findings of fact because they were not supported by the evidence. This Court concludes that Mother's claimed errors are either inaccurate interpretations of the evidence or inconsequential. The record demonstrates that there was ample evidence before the trial court from which it could conclude that permanent custody was in the children's best interests. Accordingly, the trial court did not err in terminating Mother's parental rights and in placing A.L. and C.L. in the permanent custody of CSB. Mother's assignment of error is overruled.

CONCLUSION

{¶41} Mother's sole assignment of error is overruled. The judgment of the Wayne 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 Wayne, 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.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
MOORE, P. J.
CONCUR

APPEARANCES:

CONRAD G. OLSON, Attorney at Law, for Appellant.

MARTIN FRANTZ, Prosecuting Attorney, and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.

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