

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: R.G.
 S.G.
 R.G.
 N.G.
 D.G.

C. A. Nos. 24834
 24850

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN 07-02-0187
 DN 07-02-0188
 DN 07-03-0189
 DN 07-02-0190
 DN 07-02-0191

DECISION AND JOURNAL ENTRY

Dated: December 2, 2009

DICKINSON, Judge.

INTRODUCTION

{¶1} This case involves the permanent custody of five minors. The issue raised in separate appeals by the mother of all the children and the father of two of the children is whether Summit County Children Services Board presented clear and convincing evidence that permanent custody was in the best interests of the children. The evidence presented at the hearing focused primarily on the years of ongoing violence in the home, the unwillingness of either parent to accept responsibility for exposing the children to violence, and the parents' failure to recognize that each of their children had serious mental health problems that required regular treatment. This Court has concluded that the evidence presented by Children Services supported the trial court's decision to terminate parental rights.

FACTS

{¶2} Terra Albright is the natural mother of R.G., born September 26, 1996, R.G., born March 20, 1998, S.G., born March 19, 2000, D.G., born March 20, 2002, and N.G., born August 6, 2003. The children have two different fathers. Although each of the fathers was married to the mother and lived in the home at one time, it is unclear from the record exactly when each man lived there. Earl G., who has appealed, is the father of only the youngest two children, D.G. and N.G. The father of the other three children has had no contact with the family for several years and is not a party to this appeal.

{¶3} On February 22, 2007, Akron police officers removed the children from their home under Rule 6 of the Ohio Rules of Juvenile Procedure. The officers had responded to a report that the oldest child, R.G., was attacking the mother with a large board. When the officers arrived at the home, they discovered that the mother had locked herself in a bedroom and was unable to control any of the four children who were home at the time. In addition to R.G. threatening others in the home with a large board, N.G., then age three, was on the roof of the house throwing toys and household items. As the officers attempted to restrain R.G., his younger brother, who also has the initials R.G., came out of the kitchen wielding a butcher knife. The officers also discovered that both R.G.s had bruises on their legs, which the boys claimed had been inflicted by the mother.

{¶4} Children Services had been involved with this family during 2006 because of similar concerns about domestic violence in the home and the parents' failure to supervise or appropriately discipline the children. Although the children were briefly removed from the home, they were returned under an order of protective supervision, and the case was eventually closed.

{¶5} During the current case, each child received a mental health assessment and began regular counseling to address serious behavior problems and mental health issues. In addition to other mental health diagnoses, most of the children were diagnosed with post-traumatic stress disorder because of their long-term exposure to domestic violence. The youngest child, N.G., also had an ongoing medical problem that was not diagnosed until he started receiving regular medical treatment.

{¶6} During the next two years, the children made slow progress in counseling but the parents failed to work consistently toward reunification with their children. Each parent was resistant to working with the caseworker and tended to focus more on their own needs than the needs of their children. According to the caseworkers and others, the parents had gained little insight into the serious problems in their home. Neither parent seemed to recognize the severity of their children's problems, nor did they accept responsibility for exposing their children to violence and a lack of structure in the home. For approximately six months during the case, the father stopped participating in all reunification services and did not visit or have any contact with his children.

{¶7} On January 30, 2009, Children Services moved for permanent custody of all five children. Following a hearing on the motion, the trial court found that the children had been in the temporary custody of Children Services for more than 12 of the prior 22 months and that permanent custody was in their best interests. Consequently, it terminated parental rights and placed the children in the permanent custody of Children Services. The parents separately appealed and the appeals were consolidated. Because each parent has raised a similar assignment of error, this Court will address their challenges together.

BEST INTERESTS OF THE CHILDREN

{¶8} The parents contend that the trial court's permanent custody decision was not supported by the evidence presented at the hearing. Before a juvenile court may 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 Section 2151.41.4(E) of the Ohio Revised Code; and (2) the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under Section 2151.41.4(D) of the Ohio Revised Code. See R.C. 2151.41.4(B)(1); 2151.41.4(B)(2); see also *In re William S.*, 75 Ohio St. 3d 95, 99 (1996).

{¶9} When evaluating whether a judgment is against the manifest weight of the evidence in a permanent custody case, this Court reviews the entire record and "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the [judgment]." *State v. Thompkins*, 78 Ohio St. 3d 380, 387 (1997) (quoting *State v. Martin*, 20 Ohio App. 3d 172, 175 (1983)). Accordingly, before reversing a judgment as being against the manifest weight of the evidence in this context, the court must determine whether the trier of fact, in resolving evidentiary conflicts

and making credibility determinations, clearly lost its way and created a manifest miscarriage of justice. See *In re M.C.*, 9th Dist No. 24797, 2009-Ohio-5544, at ¶8, 17.

{¶10} 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 Children Services for more than 12 of the prior 22 months and the parents do not dispute that finding. They challenge only the trial court's finding that permanent custody was in the children's best interests.

{¶11} 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 Section 2151.41.4(D) of the Ohio Revised Code: 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. Section 2151.41.4(D) also required the trial court to consider whether "any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶12} The parents' interaction with the children throughout this two-year case was limited to weekly, closely supervised visits. Children Services never requested an expansion of visitation because the parents had not complied with the requirements of the case plan and Children Services remained concerned about their lack of parenting skills. Although witnesses agreed that the father's interaction with his two children, D.G. and N.G., was usually appropriate, he did not attend visits on a consistent basis. For a period of approximately six months, the father missed all visits with his children and he failed to explain his prolonged absence to Children Services or the court.

{¶13} The trial court found that the father's failure to visit or maintain contact with his children for a six-month period demonstrated his lack of commitment to them. Moreover, "[a]

presumption of abandonment arises under [Section] 2151.011(C) when a parent fails to have contact with the child[ren] for more than 90 days.” *In re A.W.*, 9th Dist. No. 08CA009366, 2009-Ohio-1827, at ¶7. Because the father failed to have contact with his children for much longer than 90 days, the trial court found that his prolonged lack of contact constituted abandonment.

{¶14} The mother came to the scheduled visits regularly, but she tended to interact only with N.G., the youngest of the five children. Several witnesses testified that there seemed to be no bond between the mother and her oldest child, R.G. The mother and R.G. each claimed to have been physically abused by the other. The mother admitted to others that she had no control over R.G. and that she did not want him returned to her home. She had hoped that her mother would agree to take custody of him, but that placement did not materialize.

{¶15} Although the parents claimed to love their other children and want to be reunified with them, there was undisputed evidence before the court that the mother and the father had separately approached one of the foster mothers and asked her to adopt some of the children. The father admitted that it was after the foster mother told him that she could not adopt his children that he became more serious about reunification.

{¶16} Before this case began, the children’s relationships with their parents included a life of ongoing domestic violence. There was evidence that the children had been exposed to violence between their parents and that both the mother and the father had physically abused the children. Due to their prolonged exposure to violence in the home, most of the children were diagnosed with post-traumatic stress disorder and several of the children had developed problems controlling their own aggressive behavior, particularly the oldest child, R.G.

{¶17} The parents admitted that the children had been the victims of ongoing violence in their home, but neither accepted any responsibility for harming their children or for failing to protect them. Although the father admitted that he had physically disciplined the children, he maintained that he never hit them with anything other than his hand and that he only struck them on their rear ends. He further testified, however, that the mother often used physical discipline on the children that included striking them with objects such as spatulas, belts, and shoes. The father conceded that he had observed the mother beating the children but had done nothing to protect them from her. The mother, on the other hand, claimed that all violence against the children had been perpetrated by their fathers, not her, and that there was nothing that she could have done to protect her children from their fathers.

{¶18} While in counseling, R.G. further revealed that, several years earlier while living in the mother's home, he had been sexually molested by his father, who is not a party to this appeal. R.G.'s prior molestation was revealed after the child had exhibited inappropriate sexual behavior toward his brother and others.

{¶19} In addition to aggressive and sexually-inappropriate behavior, the children had numerous behavior problems that had caused disruptions in their foster placements and at school. Most of the children exhibited chronic problems with stealing from their foster parents, neighbors, or at school. They stole items ranging from small trinkets and food to cash and other valuable items. Several of the children had told others that their mother had taught them to steal items for the home while they lived with her. The children's behavior problems also included persistent lying, hoarding food, self-injurious behavior, and chronic bedwetting by school-aged children. Some of the children also experienced regular nightmares and had significant fears of normal activities such as bathing and using the toilet.

{¶20} Each of the children was diagnosed with multiple mental illnesses as well as some form of attention deficit and/or hyperactivity disorder. Two of them were also diagnosed with developmental delays. Most of the children required medication for one or more of their diagnosed conditions. The youngest child, N.G., who was not growing at a normal rate, was also diagnosed with a tumor on his pituitary gland. He required daily injections of a growth hormone, which doctors hoped would enable him to grow to a normal height.

{¶21} After the children had been living in structured foster homes and receiving regular medical treatment and counseling for almost two years, they were starting to show improvement. Several witnesses expressed doubt about whether the parents would continue the children's treatment if they were returned to their care. Of particular concern was the parents' inability or unwillingness to understand the severity of their children's mental health problems or their need for ongoing treatment and medication. The mother repeatedly expressed her opinion that her children's behaviors were normal and that they did not need treatment.

{¶22} All of the children except the youngest, N.G., had expressed their wishes about where they wanted to live. The oldest child, R.G., had repeatedly said that he did not want to return home because his mother had physically abused him. He was happy in his foster placement and wanted to stay there. The middle three children, the younger R.G., S.G., and D.G., had expressed their wishes to return home.

{¶23} The guardian ad litem opined that permanent custody was in the best interests of all five children. She emphasized that the parents had not alleviated any of the agency's concerns that had brought the children into custody two years earlier. The guardian expressed particular concern that the parents did not understand the significance of their children's mental health problems, nor did they accept any responsibility for their past abuse and neglect of the

children and how it had impacted the children's ability to function. She also expressed doubt about either parent's ability to keep the children safe from further physical abuse in the home.

{¶24} The children had spent nearly two years in the temporary custody of Children Services. Prior to the commencement of this case, they had resided with the mother and, for at least part of their lives, with the father, although it is not clear from the record exactly when the father lived in the home.

{¶25} After nearly two years in temporary custody, these children were in need of a legally secure permanent placement. The parents were not able to provide them with a suitable home at the time of the hearing. Children Services had been unable to find any suitable relatives who were able to provide a legally secure permanent placement for any of the children. Consequently, the trial court reasonably concluded that a legally secure permanent placement could only be achieved through a grant of permanent custody to Children Services.

{¶26} Finally, the trial court was required to consider whether any of the factors in Sections 2151.41.4(E)(7) through (11) of the Ohio Revised Code applied to the parents and children. R.C. 2151.414(D). As indicated above, the trial court found that Section 2151.41.4(E)(10) applied in this situation because the father had abandoned his children by having no contact with them for more than six months during this case.

{¶27} Given the evidence presented at the permanent custody hearing, this Court cannot say that the trial court lost its way in concluding that permanent custody was in the best interests of the children. The parents' assignments of error are overruled.

CONCLUSION

{¶28} The parents' assignments of error are overruled. The judgment of the Summit

County Common Pleas Court, 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 appellants.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

MARTHA HOM, attorney at law, for appellant.

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