

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: C.C.

C.A. No. 25113

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN07-02-0201

DECISION AND JOURNAL ENTRY

Dated: March 24, 2010

WHITMORE, Judge.

{¶1} Appellant, Summit County Children Services Board (“CSB”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that denied its motion for permanent custody and placed a minor child in the legal custody of her relatives, Kent and Tera Teachey. This Court affirms.

I

{¶2} In a prior proceeding, C.C., born January 5, 1998, was removed from her biological parents, Linwood C. (“Father”) and Judy S. (“Mother”), shortly after her birth. At that time, she was placed in the legal custody of her paternal grandmother. See *In re Reeves* (June 7, 2000), 9th Dist. Nos. 19650, 19673, 19706, 19669, 19674, 19707, 19672, 19702, at *12. The grandmother died in October 2006, and C.C. remained with her paternal grandfather (“Grandfather”) until the present case. She was removed in February 2007, based on her own assertions that she had been sexually abused by Grandfather and her brother, S.C., who lived in

the home as well, and also because of reports that C.C. had been acting out sexually at school. Upon stipulation, C.C. was adjudicated dependent and placed in the temporary custody of CSB.

{¶3} Notwithstanding these claims of sexual abuse taking place in Grandfather's home, CSB's initial goal was to return C.C. to Grandfather. The agency petitioned the court to grant legal custody to Grandfather with protective supervision. As the case progressed, CSB became concerned, however, that Grandfather was slow to engage in services designed to assist him in addressing C.C.'s special needs and became even more concerned when C.C. alleged that her brother engaged in sexual activity with her during a weekend visit in June 2008. As will be discussed later, there was significant dispute as to whether this alleged sexual activity actually took place. Nevertheless, on August 18, 2008, CSB moved for permanent custody of the child. Shortly thereafter, the agency also initiated the process of conducting an Interstate Compact on the Placement of the Child ("ICPC") with Kent and Tessa Teachey, paternal relatives from North Carolina. Grandfather, Mother, Father, and the Teachey's each opposed permanent custody and filed motions for legal custody. Following a hearing on all pending motions, the trial court denied CSB's motion for permanent custody and granted legal custody to Mr. and Mrs. Teachey, a placement ultimately supported by Grandfather, Mother, Father, and C.C., through her appointed counsel. CSB has appealed and has assigned one error for review. Father and C.C. have each filed an appellate brief seeking affirmance of the trial court judgment.

II

Assignment of Error

"THE JUVENILE COURT ABUSED ITS [DISCRETION] IN DENYING CHILDREN SERVICES BOARD'S MOTION FOR PERMANENT CUSTODY AND AWARDING LEGAL CUSTODY TO OUT-OF-STATE RELATIVES IN VIOLATION OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN."

{¶4} First, CSB has argued that the trial court erred in finding that the best interest of the child supported an award of legal custody to Mr. and Mrs. Teachey as opposed to an award of permanent custody to the agency.

{¶5} Second, CSB has argued that the trial court violated the ICPC, as set forth in R.C. 5103.20, “by granting legal custody to out-of-state relatives prior to the completion of the requisite ICPC paperwork” thereby failing to ensure that the proper “safeguards” are in place. The only specific complaint pointed to by CSB is that the interstate compact regulations require that the Teachey’s must have obtained their foster care license before the trial court could award them legal custody, and that the trial court, in this instance, erred in granting them legal custody prior to their obtaining such license. Although the Teachey’s did not have their license at the time of the custody hearing, the agency notified the trial court on September 30, 2009, that the Teachey’s had become licensed foster parents and that North Carolina had approved placement of C.C. with them through the ICPC. Thereafter, on November 12, 2009, the trial court granted legal custody of C.C. to the Teachey’s. CSB has not specifically identified any other area of non-compliance with the interstate compact requirements or pointed to any resultant prejudice. Accordingly, CSB’s argument on this point is without merit.

{¶6} Returning to the first argument, we recognize that 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.

{¶7} In considering CSB's motion for permanent custody, the trial court found that the first prong of the test was satisfied because C.C. had been in the temporary custody of CSB for more than 12 of the prior 22 months, and no party has disputed that finding. CSB has challenged only the trial court's decision on the best interest prong of the permanent custody test and has claimed that the trial court erred in failing to find that permanent custody was in the best interest of the child. When determining whether a grant of permanent custody is in the child's best interest, the juvenile court must consider all relevant factors, including: the child's personal interactions and relationships; the child's wishes regarding placement; the custodial history of the child; whether there are appropriate alternatives to permanent custody; and whether any of the factors in R.C. 2151.414(E)(7) - (11) apply. R.C. 2151.414(D). By the same token, CSB has also argued that an order granting legal custody to Mr. and Mrs. Teachey is not in the child's best interest. In making that argument, CSB has again relied upon the best interest factors set forth in R.C. 2151.414(D), which this Court has previously recognized as setting forth an appropriate guideline in evaluating the best interest of a child in the context of a legal custody determination. *In re R.R.*, 9th Dist. No. 23641, 2007-Ohio-4808, at ¶12. Accordingly, in reviewing this assignment of error, this Court will review the evidence regarding all factors relevant to the best interest of the child, including those set forth in R.C. 2151.414(D).

1. Personal interactions and interrelationships

{¶8} The first best interest factor requires consideration of the relevant personal interactions and interrelationships of the child. At the time of the hearing in this case, C.C. was an eleven-year-old child, with diagnoses of autism, bipolar disorder, and attention

deficit/hyperactivity disorder. She was taking five different prescription medications. C.C. was also said to have a severe cognitive and language disorder and was delayed in both comprehension and verbal expression. Her cognitive disability was described as chronic and was considered to affect every circumstance of her life. Her counselors indicated that C.C. has a difficult time interacting with peers because of a lack of insight. According to her service providers, C.C. interprets things on a very concrete level and is very rigid in her behaviors, occasionally responding with tantrums, outbursts, refusals to participate, and inappropriate comments. She requires a very structured environment and a great deal of preparation to transition from one situation to another.

{¶9} C.C.'s closest personal relationship was with Grandfather, with whom she lived from infancy until her removal in this case. Early case-planning efforts were focused almost entirely on reunification with Grandfather because it was clear that that reflected the wishes of C.C. By all accounts, she had a very strong bond with Grandfather. Grandfather is 63 years old and worked as a repair mechanic for First Energy. After his wife died in October 2006, he continued to provide care for C.C. and S.C. If Grandfather regained custody of C.C., he intended to retire to care for his two grandchildren. He expressed his willingness to give C.C. all the training and services she needed. He also explained that he had people to help him because he understood that the children must be supervised around the clock. He believed it would be best for C.C. to be with him because he had taken care of her since she was a little girl and cares for her a great deal. He explained that they have a good relationship based on love, caring, and respect. He stated that he and C.C. are bonded and get along very well. He likes being with her and hates to think about the idea of never seeing her again. He thought that would destroy her and she would never be the same again.

{¶10} C.C. also had a continuing relationship with her parents, and each parent filed a motion seeking legal custody of the child. Both parents visited C.C. while she had lived with her grandparents and during this proceeding. C.C. clearly enjoyed seeing them and was affectionate with them, although her relationship with Grandfather was stronger and more meaningful to her. Caseworker Lynne Brady testified that C.C. is attached to both of her parents, though there was more affection and consistency between C.C. and Father. Ms. Brady also emphasized, however, that the child's strongest bond is with Grandfather. She believed that C.C. would be sad if she never saw Father again, but terminating her relationship with Grandfather would be very difficult for her to overcome. C.C.'s counselor, Linda Hritz of Akron Child Guidance and Family Solutions, similarly explained that C.C. was always pleased to see her parents, but loved Grandfather.

{¶11} For her part, Mother admitted to having mental health diagnoses and receiving treatment for depression and bipolar disorder. She also testified that, although she was seeking custody, she realized, in her heart, that C.C. would be better off with the Teacheys, Grandfather, or Father. For his part, Father testified to participating in many family activities with C.C. over the years and sought legal custody in himself. Father admitted that his parental rights were involuntarily terminated as to C.C.'s half-siblings in 1999. As an alternative, he advocated placing C.C. with the Teacheys.

{¶12} As stated earlier, CSB's initial plan to return C.C. to Grandfather stalled after C.C. made allegations that she and her 13-year-old brother, S.C., engaged in sexual activity during a weekend visit in June 2008. There was significant dispute about whether these allegations had any truth to them. Grandfather argued that C.C.'s claims were unfounded because the two children were only alone for 15 minutes, and he also pointed out that C.C. had a

history of making similar claims that were later retracted or proven to be false. Counselor Hritz supported the proposition that C.C. had made such false accusations in the past. CSB, on the other hand, felt that C.C.'s allegations, which came in the form of a letter, pictures, and oral statements, had sufficient consistency and detail to merit concern and felt that Grandfather did not sufficiently credit C.C.'s allegations. Ultimately, no criminal charges were filed, nor was there any plan to address sexual abuse through counseling of C.C. Nevertheless, shortly thereafter, CSB altered its course and moved for permanent custody. The agency also initiated the process to investigate an interstate placement with Kent and Tessa Teachey in North Carolina, who became involved and moved for legal custody after Grandfather's motion for custody was placed in doubt.

{¶13} Grandfather indicated that if C.C. could not be placed with him, he would prefer that she be placed with the paternal relatives from North Carolina. Mother testified similarly, noting that the Teachey's had a little girl about C.C.'s age that would be good for C.C. Father preferred to have custody himself, but alternatively supported placement with the Teachey's because there is a large and supportive extended family network in North Carolina. Notwithstanding the concerns expressed by CSB, all parties agreed that C.C. had a strong bond with her family and it would be difficult for her to be permanently cut off from them.

{¶14} C.C.'s relationship with Mr. and Mrs. Teachey was also explored during the custody hearing. The couple was among the extended family members in North Carolina and often visited by the Akron family over the years. Mr. Teachey is a brother of C.C.'s deceased grandmother. Mrs. Teachey explained that the Akron family would visit North Carolina once or twice a year and stay with the Teachey's for a week at a time. Ms. Brady testified that she believed family was important to the Teachey's and, although C.C. was slow to warm up to them

during visits, she became talkative and affectionate by the end of their visits. It was obvious to Ms. Brady that C.C. remembered the Teacheys as well as the relatives and events the Teacheys recalled to her in their conversations. The Teacheys filed a motion for legal custody, and Mrs. Teachey also told the caseworker that she and her husband would consider adoption.

{¶15} By the time of the custody hearing, CSB's application for an interstate compact assessment was in process and the Teacheys had completed a ten-week course required for adoption and foster care. The couple was awaiting a final visit by the local agency to physically assess their home. According to the caseworker, the Teacheys were receptive to information about C.C.'s behavioral issues and had demonstrated a commitment to her. Mrs. Teachey explained that she is aware of the child's special needs as she has a four-year-old grandson who is autistic, she has some experience in dealing with the needs of an autistic child, and her sister works at a school for autistic children. She believes she is fully informed and up to the challenge of caring for C.C. She explained that there are a large number of family members in the area that would be supportive and reported that she was able to change her work schedule in order to better care for C.C. She testified that she and her husband are willing to take custody of C.C. and that they can provide health insurance for her. The child would have her own bedroom and the family is able to support her. Mrs. Teachey said she is agreeable to visits by Mother, Father, and Grandfather.

{¶16} In attempting to make CSB's case for permanent custody, Caseworker Brady testified that the current foster mother was willing to adopt C.C. In that context, she presented testimony regarding the child's relationship with the foster family. The caseworker stated that C.C. is comfortable in the home, though she is still adjusting to the placement after one year. She explained that C.C. attends an after-school program because the foster mother works. Ms.

Brady said that the foster mother is very committed and patient. The caseworker also stated that the foster mother tries to maintain structure and has become more actively involved in C.C.'s mental health counseling.

{¶17} Counselor Hritz, testified somewhat differently. She explained that the foster mother came to some of the counseling sessions during the summer of 2008, but she “wasn’t very invested in doing the therapy with [C.C.]” The counselor added: “There was a lot I did not like about the foster home. However *** to keep moving [C.C.] wouldn’t be good for her either, and this had elements [that were] working *** it was functional.” Ms. Hritz explained that she would have preferred that the foster home did not have so many children in it, (a 17-year-old natural daughter and two other teenaged foster girls) and that the foster mother spent more time with C.C., instead of working full time.

{¶18} While C.C. was in this foster placement, she had to be hospitalized in a psychiatric unit because she was completely out of control and unruly. She also spent three weeks in respite care, and in-home visits by service providers were increased from biweekly to weekly to help work on C.C.'s behaviors. While in this placement, C.C. sometimes refused to do anything, and the police had to be called to get her out of bed.

2. The wishes of the child

{¶19} The caseworker and the guardian ad litem both testified that C.C. said she wanted to live with Grandfather. The caseworker observed that Grandfather had been the single constant during most of C.C.'s life. The guardian ad litem did not support returning C.C. to Grandfather, however, because of his failure to believe that C.C. had been abused. The guardian found it “extremely concerning” that no one – meaning Grandfather and Father – seemed to believe that C.C. had been abused despite the consistency in her statements, drawings, and writing. The

guardian ad litem also expressed concern with Grandfather's ability to provide round-the-clock supervision of C.C. if she were in the same home with S.C.

{¶20} Given the limitations of C.C., it is reasonable, in this case, to consider the recommendations of the guardian ad litem for purposes of R.C. 2151.414(D)(3), the wishes of the child. The guardian ad litem recommended that C.C. should be placed in the permanent custody of CSB, but also emphasized her preference that C.C. should be placed with the Teachey family and maintain contact with her Akron family, including Grandfather and her parents. The guardian ad litem explained that she was not technically able to support legal custody with the Teachey family at that time because their home study had not yet been approved. At the same time, she emphasized that she was not "ruling out" the Teachey family because, after approval of their home study, they would be a certified adoptive home. She was "very much hoping that their home study does come through" and that that is a potential home for C.C.

{¶21} In explaining her recommendation, the guardian acknowledged C.C.'s close relationship to Grandfather and stated that she believed C.C. would have a difficult time with permanent custody and not seeing Grandfather again. She stated: "[M]y hope is that the relative home does get approved and [C.C.] would be able to continue to have some contact with [Grandfather]. That is my hope for [C.C.], because I think it would be beneficial to her."

{¶22} The guardian ad litem did not recommend placement with the foster mother, who was apparently willing to consider adoption of C.C. She stated that she did not know that the current foster home would be the best place for C.C. because the child needs a lot of structure and the foster mother works late into the evenings. The guardian ad litem observed that the foster mother recently made some changes in her work schedule to accommodate C.C., but she may not be able to maintain those changes long-term.

{¶23} Therefore, although the guardian ad litem technically recommended permanent custody, she clearly believed that it was in the best interest of C.C. to be placed with the Teacheys and maintain her relationship with her Akron family. The guardian ad litem considered the fact that the Teacheys have extended family support in their community and knowledge of autism in their family as positive factors in reaching her conclusion.

3. The custodial history of the child

{¶24} The paternal grandparents obtained legal custody of C.C. at 14 months. The paternal grandmother died in October 2006, and C.C. continued to reside with the paternal grandfather until her removal from the home in February 2007. During temporary custody, C.C. was removed from two normal needs foster homes within the first five months. After a 30-day in-house evaluation at Beech Brook, C.C. was placed in an out-of-county therapeutic foster home from August 2007 until April 2008. At that time, she was moved to a second therapeutic foster home which was closer to her family and remained there for the year prior to the custody hearing.

4. The child's need for a legally secure permanent placement and whether that can be achieved without a grant of permanent custody to the agency

{¶25} At the time of the custody hearing, the Teacheys' home study was not yet completed and their license as kinship/relative foster parents had not yet been issued. Virtually all of the testimony recommending permanent custody was conditioned upon that fact. Otherwise, the witnesses all spoke very favorably about the Teacheys as potential caregivers and the fact that a placement with them would permit C.C. to maintain her strong ties to her Akron family. The Teacheys were issued a license from North Carolina as kinship/relative foster parents after the custody hearing, but prior to the trial court order granting them legal custody.

{¶26} Caseworker Brady's recommendation of permanent custody was expressly based on the evidence before the juvenile court at the time of the custody hearing. She specifically noted that CSB had not ruled out the possibility of working with Mr. and Mrs. Teachey if their home study was approved, which was, in fact, accomplished after the custody hearing. Ms. Brady believed it would be in the child's best interest to be placed in a safe and secure family home where she could remain until grown. The guardian ad litem supported the idea of placing the child with the Teacheys.

{¶27} As to the likelihood of finding another adoptive home for C.C., the caseworker testified that she did not know how long it would take, but "there are families that are interested in adopting children who have special needs." The guardian ad litem expressed the belief that C.C. was "[not] highly adoptable, *** but still adoptable." In any case, there was evidence before the trial court questioning the advisability of C.C. remaining with her current foster family.

{¶28} An award of permanent custody by the trial court could potentially mean permanent separation from all family members known to C.C. Undisputed testimony emphasized that a permanent separation from her Akron family would be very difficult for C.C. The child clearly had a strong bond with Grandfather and enjoyed her relationship with her parents as well. All the witnesses spoke favorably about a potential placement with the Teacheys, as did even the prosecutor on behalf of CSB in closing argument. CSB simply seemed to favor an award of permanent custody because the Teacheys had not yet obtained their license as of the time of the custody hearing. There was ample evidence from which the trial court could conclude that a legally secure permanent placement could be achieved without a grant of permanent custody to the agency and that such a placement, i.e., legal custody to the Teacheys,

was in the best interest of the child. Based upon this record, the trial court could reasonably conclude that an award of legal custody to the Teacheys would be in the child's best interest and, furthermore, that CSB failed to clearly and convincingly prove that permanent custody and a termination of parental rights was in C.C.'s best interest. CSB's sole assignment of error is overruled.

III

{¶29} CSB's 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

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

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

BRENDON J. KOHRS, Attorney at Law, for Appellee.

PAUL M. GRANT, Attorney at Law, for Appellee.

PAMELA HAWKINS, Attorney at Law, for Appellee.

ANNETTE POWERS, Attorney at Law, for Appellee.

JOSEPH KERNAN, Guardian Ad Litem.