[Cite as *In re H.H.*, 2010-Ohio-5992.]

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

IN RE: H. H. & L. H.	C. A. No. 25463
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE Nos. DN 07-12-1199 DN 07-12-1200

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

BELFANCE, Presiding Judge.

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

FACTS

{¶2} On December 20, 2007, H.H., born September 22, 1997, and L.H., born January 4, 1999, reported to school officials that they were afraid for their Mother's life and for their own safety because of the behavior of Mother's live-in boyfriend, Jeffrey Brandon. The next day, Akron police officers came to their home and removed these two girls along with a younger sibling, M.T., born May 3, 2000. According to the complaint subsequently filed by CSB, H.H. and L.H. witnessed Mr. Brandon grab Mother by the hair and threaten to burn her. He punched her in the face and pulled her arm up behind her back. When Mother tried to stay in the

children's room overnight, he threatened her with a knife. The children were unable to call the police at the time because Mr. Brandon had broken the phone.

{¶3} The complaint alleged that Mother admitted the altercation to police, but failed to press charges. Mother had also previously failed to intervene when Mr. Brandon physically disciplined her children against her wishes. In addition, the complaint alleged that the children did not have beds, but slept on furniture in the living room. Reportedly, there was no food in the home and there were dirty dishes and clothes all over the floors.

{¶4} Upon removal, all three children were placed with relatives. H.H. and L.H. were placed with an aunt. M.T. was placed with the child's biological father, and the court eventually granted him legal custody of M.T. Mother agreed to the legal custody order, and M.T. is not a part of this appeal. Mother's fourth child, an older boy, was already living with the maternal grandmother and has remained there. He is not a part of this appeal either. The alleged father of H.H. and L.H. did not participate in the proceedings below.

{¶5} In due course, the juvenile court adjudicated H.H. and L.H. to be dependent children and granted temporary custody of them to CSB. The trial court adopted a case plan for Mother, which addressed anger management, housing, mental health, and visitation. In addition, H.H. and L.H. were evaluated and treated at Northeast Ohio Behavioral Health. Their therapist testified that the girls were diagnosed with post traumatic stress disorder based on exposure to severe domestic violence and numerous occasions of witnessing sexual activity. They each had a highly sexualized tone and frequently recurring thoughts or feelings about these events. In addition, L.H. reported being raped by a boyfriend of Mother, but it appears that the investigation was because of "conflicting stories." The girls had been moved through a series of relative and foster homes due to their difficult behaviors and recurring problems. After more

than a year of therapy, their trauma is still unresolved, and the therapist believes that these special needs children will need on-going services.

{¶6} The guardian ad litem testified that there is no question that Mother and the two girls love each other and share a bond. She said the girls want to be with their mother, but they also want to live without being afraid. L.H. continues to fear that her alleged assailant will find her again. Both girls continue to exhibit sexualized behavior and poor boundaries. They have learning problems and poor social skills. According to the guardian ad litem, they have made great progress while in the custody of CSB. The guardian ad litem reported that, for the first time in their lives, the girls each have a bed, regular meals, consistent schooling, and adults who are focused on meeting their needs. Based on a concern for the children's safety, security, and stability, the guardian ad litem concluded that permanent custody is in the best interest of the children.

{¶7} On December 7, 2009, CSB moved for permanent custody. For her part, Mother moved for legal custody. No other relatives were available for placement of the children. Both the maternal and paternal grandmothers withdrew from consideration. Following a hearing, the trial court denied Mother's motion for legal custody and granted CSB's motion for permanent custody based on findings that H.H. and L.H. had been in the temporary custody of CSB for 12 or more months of 22 consecutive months, that their father had abandoned them, and that a grant of permanent custody was in the children's best interests. Mother timely appeals and assigns one error for review.

Assignment of Error

> "THE TRIAL COURT ERRED WHEN IT GRANTED PERMANENT CUSTODY TO SUMMIT COUNTY CHILDREN'S SERVICES WHERE THE TERMINATION OF APPELLANT'S PARENTAL RIGHTS WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND WAS

> AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND WHERE SUMMIT COUNTY CHILDREN'S SERVICES HAD FAILED TO USE REASONABLE EFFORTS TO REUNITE THE MINOR CHILDREN WITH THEIR MOTHER, THE APPELLANT.

{¶8} Although Mother's assignment of error is broadly framed, her supporting argument focuses on claims that the trial court erred in failing to make a determination that the agency made reasonable efforts to reunify the family, that CSB failed to make reasonable efforts to reunify the family, and finally that the agency did not make "diligent efforts" to reunify the family.

Trial court's failure to make a determination of reasonable efforts at the permanent custody hearing.

{¶9} We first consider Mother's claim that the trial court erred in not making a determination of reasonable efforts to reunify the family at the permanent custody hearing.

{¶10} "Reasonable efforts" have been described as the state's efforts to resolve a threat to a child's health or safety before removing the child from the home or permitting the child to return home again, which follow an intervention to protect a child from abuse or neglect. See *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, at ¶28, citing Will L. Crossley, Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation (2003), 12 B.U. Pub.Int.L.J. 259, 260. These efforts are required because of the fundamental nature of the right to parent one's children. *In re C.F.*, 2007-Ohio-1104, at ¶21.

{¶11} The Ohio Supreme Court has emphasized that the broad purpose of Ohio's child-welfare laws is "to care for and protect children, 'whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.'" Id. at ¶29, quoting R.C. 2151.01(A). Accordingly, the requirements for reasonable reunification efforts "pervade[] federal and Ohio law[.]" Id., at ¶21. Various

sections of the Revised Code refer to the agency's duty to preserve or reunify the family unit. Id., at ¶29. In other words, when the state intervenes in a parent-child relationship, it has a considerable duty to rehabilitate the family through a comprehensive plan of reunification.

{¶12} Nevertheless, the Ohio Supreme Court has held that the trial court is not obligated by R.C. 2151.419 to make a determination that the agency used reasonable efforts to reunify the family at the time of the permanent custody hearing unless the agency has not established that reasonable efforts have been made prior to that hearing. See *In re C.F.*, 2007-Ohio-1104, at ¶41 and ¶43. See, also, R.C. 2151.419. The trial court is only obligated to make a determination that the agency has made reasonable efforts to reunify the family at "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children, all of which occur prior to a decision transferring permanent custody to the state." *In re C.F.*, 2007-Ohio-1104, at ¶41; R.C. 2151.419.

{¶13} In this case, the trial court entered a finding that the agency had made reasonable efforts to reunify the family on several occasions, including the shelter care hearing on December 31, 2007; the hearing for adjudication and disposition on February 26, 2008; and additional hearings taking place on August 12, 2008, November 5, 2008, October 26, 2009, and December 15, 2009.

{¶14} We note that notwithstanding the trial court's February 26, 2008 determination that the agency had made reasonable efforts to reunify the family, the magistrate made a subsequent interim finding that the agency had not made reasonable efforts at a May 28, 2008 hearing. The magistrate's finding was based on CSB's delay in assigning an ongoing protective worker and delay in securing counseling services for the children. The ongoing caseworker later testified that this delay stemmed from new allegations brought forward by the children after their

removal from the home. Those new allegations included a January 2008 claim by L.H. that she had been raped by Mr. Brandon and a related claim by H.L. that she and M.H. had both been "touched" by him. According to the ongoing caseworker, this meant that a new investigation was necessary and the intake worker continued to work on the case. By the time of the May 2008 hearing, the ongoing protective caseworker had been assigned and H.H. and L.H. had started in counseling. From that point, the family had 18 months of case planning services with an ongoing caseworker before CSB filed its motion for permanent custody. Subsequent to the assignment of one ongoing caseworker, the trial court on numerous occasions entered its finding that the agency had made reasonable efforts to reunify the family.

{¶15} In light of the above, Mother's argument that the trial court erred in not making a determination of reasonable efforts to reunify the family at the permanent custody hearing is without merit.

The state's obligation to make reasonable efforts to reunify the family.

{¶16} We next consider Mother's claim that CSB failed to make reasonable efforts to reunify her with her children. Mother has identified several specific instances that she believes demonstrate that the state failed to make reasonable efforts to reunify her with her children. As indicated above, the Supreme Court has held that the trial court need not make a reasonable efforts determination at the time of the permanent custody hearing unless the agency has not established reasonable efforts have been made prior to the hearing on a motion for permanent custody. *In re C.F.*, 2007-Ohio-1104, at ¶43.

{¶17} Nonetheless, because of "the agency's duty to make reasonable efforts to preserve or reunify the family unit[,] *In re C.F.*, 2007-Ohio-1104, at ¶29, we consider Mother's arguments in the context of the impact that the efforts of the agency had upon the best interest

determination. When determining whether a grant of permanent custody is in a child's best interest, the juvenile court must consider all the relevant factors, including those enumerated in R.C. 2151.414(D): the interaction and interrelationships of the children, the wishes of the child, the custodial history of the child, and the child's need for permanence in his life. See *In re R.G.*, 9th Dist. Nos. 24834 & 24850, 2009-Ohio-6284, at ¶11.

{¶18} Initially, Mother points to the fact that CSB did not visit Mother's current home. A caseworker's visit to a parent's living quarters is an important component of evaluating the child's living environment. However, Mother has not demonstrated prejudice. At the permanent custody hearing, CSB did not contest Mother's housing. In fact, the caseworker testified that Mother might be able to support the girls with her current low-income housing arrangement, food stamps, and her social security income of approximately $1000 a month. In addition, the trial court did not rely on inadequate housing in reaching its decision to terminate Mother's parental rights. Instead, the trial court focused on Mother's failure to engage in mental health counseling, her failure to complete parenting classes, and her history of engaging in inappropriate relationships with men. For example, Mother allowed one of the men with whom she had a relationship to sell crack cocaine from her home and that resulted in Mother being convicted of permitting drug abuse and serving a jail sentence of eight months. Another man violently assaulted her in the presence of her children and Mother declined to press charges against him. The same man would walk around the house naked and engage in sexual activity with Mother "in front of" the children. He was also alleged to have sexually abused L.H. Mother's relationship with the alleged father of the girls was also a violent one. The evidence also revealed that Mother's current boyfriend has a criminal history that includes a 1993 conviction for felony robbery, a 1999 parole violation for marijuana drug use, and a 2006

conviction for misdemeanor theft. Accordingly, Mother has not demonstrated prejudice because the caseworker did not visit her current home.

{¶19} Second, Mother claims that CSB failed to make reasonable efforts to enroll her in parenting classes. Mother completed some parenting classes at Catholic Social Services but stopped attending in March 2008, three months into the case. She never completed the parenting class series. The results of Mother's psychological assessment emphasized the need for her to gain more insight into parenting. The assessment revealed that Mother had a dependent personality disorder which is characterized by the tendency to prioritize one's romantic relationships over one's own best interest and the interests of one's children, even to the extent of tolerating highly dysfunctional relationships. To this point, Mother testified that she has changed her life style from those negative relationships of the past, but at the same time, she claimed that her children have always been her priority. She stated: "My kids come first. Not no man. Never have. My kids always came first." The acknowledgement of her past negative relationships contradicts, on its face, Mother's assertion that she always placed her children first and reinforces other evidence that Mother lacked insight into the effect of her behavior on her children.

{¶20} The assessing psychologist recommended counseling for Mother, but cautioned that such disorders are very ingrained and pervasive. According to the psychologist, Mother has jeopardized the safety of her children and has exposed them to inappropriate environments. She testified that Mother did not demonstrate any insight into the fact that her relationships would be a concern to her children. She also explained that Mother's verbal skills were at the level of a ten-year-old and her non-verbal skills were at the level of a four-year-old. According to the psychologist, this result would not necessarily compel the conclusion that such an individual

could not parent, but it would certainly impact the person's ability to process information, integrate new information, and effectively apply it to interactions with one's children.

{¶21} The caseworker discussed the results of the psychological evaluation with Mother and, in light of Mother's particular needs, recommended that she attend a more hands-on parenting class. Mother agreed to attend such a program at Greenleaf and told her caseworker that she was involved in the program. Upon checking, the caseworker learned, however, that Mother was not engaged in services at Greenleaf. Mother later testified that her psychologist had told her she did not need parenting classes.

{¶22} Based on the same psychological assessment, the caseworker also suggested to Mother that she go to the Blick Clinic because it might provide her with more appropriate mental health services, and Mother apparently agreed. Nevertheless, Mother did not continue at the Blick Clinic and later testified that the clinic personnel told her she did not need counseling. These recommendations for a more hands-on parenting class and more appropriate mental health services are services that were offered to Mother, but which she failed to utilize. Therefore, Mother has not demonstrated that CSB failed to make reasonable efforts to enroll her in parenting classes

{¶23} Third, Mother complains that CSB did not offer her services in the Canton area. Mother lived in Akron when the case began, but, at some point, moved to the Canton area. Despite a requirement that Mother provide her contact information to CSB, her services providers did not know exactly where Mother was living. Part of the problem was that Mother was very difficult to reach. She had no telephone until two days before the hearing, and service providers who wished to contact her were required to call friends and family, leave messages for her, and wait for her to reply. In addition, Mother was not very forthcoming about where she

was living. The psychologist's report concludes that Mother was not being truthful about her housing when Mother stated that she was living with her sister in Barberton. The caseworker believed she was actually staying with friends at the time. The caseworker also testified that Mother did not tell her that she was living in Canton until "some months" after the fact and added that it would have been helpful if Mother had told her because the agency would have directed her to services in that area. Mother complained that the psychologist failed to recommend a parenting program in Canton, but the psychologist was not aware that Mother lived in that area. The psychologist testified that she would have, in fact, preferred to refer Mother to a particular parenting program in Canton, but did not recommend it because she believed Mother was living in Akron.

{¶24} In her merit brief, Mother suggests that she moved to Canton in January 2009, but the record does not demonstrate that she did so. The caseworker testified that in January 2009, Mother told her that she was living with her sister in Summit County, but visited her boyfriend in Canton. At a hearing held before a magistrate in March 2009, CSB reported that Mother still had not obtained housing and was currently seeking housing in both Akron and Canton. Mother and her attorney were both present at that hearing, and neither refuted that statement. In fact, Mother's attorney specifically indicated to the court that Mother was still seeking housing at the time. Finally, there is some evidence that Mother did not move into her current apartment in the Canton area until October 2009, and that she had been staying in an unspecified shelter at some point before her move to Canton.

{¶25} Thus, as late as March 2009, Mother had not communicated to the trial court or to CSB that she had moved to Canton. Furthermore, she may not have actually moved to Canton until October 2009 or later. In addition, and significantly, Mother has not pointed to any

evidence in the record demonstrating that she requested her services to be transferred to the Canton area. Absent a more supportive record and a timely request, Mother cannot complain about the location of services at this late date. Accordingly, Mother has not established that the agency acted unreasonably in failing to enroll her in other services in the Canton area.

{¶26} Fourth, Mother complains that requirements for drug screens and an anger management course were unnecessarily included in her case plan. Mother does not explain how these requirements lead to a conclusion that CSB failed to make reasonable efforts to reunify the family. Notwithstanding, assuming there was some error, any error in including these objectives in Mother's case plan has been forfeited by the lack of timely objection. In fact, Mother specifically accepted the inclusion of these items in her case plan. At the February 26, 2008 hearing for adjudication and disposition, Mother's attorney stated that Mother had no objection to the initial case plan filed by CSB, which included the provisions she now seeks to challenge. Later, on August 15, 2008, Mother personally signed an updated case plan indicating agreement with the terms and which again included both provisions.

{¶27} Moreover, the inclusion of these provisions was reasonable at the time, and there is no suggestion in the record that these provisions presented an obstacle to reunification. The requirement for drug screens was included, according to the caseworker, because Mother told the intake worker that she had smoked marijuana in the past and the caseworker believed testing would verify that she was not using drugs. Mother's tests were negative and the caseworker later testified at the permanent custody hearing that substance abuse was no longer a concern for Mother. The requirement for anger management was included because of Mother's prior criminal conviction and her involvement with domestic violence. The caseworker testified that

after the Blick Clinic reported that Mother did not need anger management counseling, she no longer requested that Mother complete this objective.

{¶28} For all of these reasons, we find no merit in Mother's contention that CSB failed to make reasonable efforts to reunify the family. Moreover, we do not find that Mother has demonstrated error in the trial court finding that permanent custody was in the best interest of the children.

Lack of "diligent efforts"

{¶29} We next address Mother's argument that the agency failed to use "reasonable case planning and diligent efforts." We have previously addressed her argument regarding a lack of reasonable efforts, but Mother's particular use of the "diligent efforts" language here suggests a reference to R.C. 2151.414(E)(1). That section, which requires a trial court to find that the parent has not remedied the conditions that caused removal of the child from the home despite "reasonable case planning and diligent efforts," is only applicable where the trial court has entered a "first-prong finding" under R.C. 2151.414(E)(1). Although the agency cited R.C. 2151.414(E)(1) in its motion for permanent custody, the trial court did not enter a finding on that factor in regard to the first prong of the permanent custody test, relying instead on a finding that the children had been in the temporary custody of the agency for 12 or more months of 22 consecutive months. See R.C. 2151.414(B)(1)(d). Mother has conceded the 12-of-22 finding, and, as a result, R.C. 2151.414(E)(1) and its requirements have no relevance here. Accordingly, this Court finds no merit in Mother's arguments regarding reasonable efforts, determinations of reasonable efforts, and diligent efforts.

Weight of the evidence

{¶30} In her merit brief Mother has fully developed her arguments concerning reasonable efforts, determinations of reasonable efforts, and diligent efforts. However, Mother has also stated in her assignment of error that "the termination of Appellant's parental rights was not supported by clear and convincing evidence and was against the manifest weight of the evidence." Mother has not presented a separate argument on these issues. Mother has cited the testimony of the caseworker regarding the type of home-environment and services the children would need if they were to be returned to Mother's custody. Mother suggests she could accomplish the plan described by the caseworker, but, in doing so, she has not indicated any cognizable legal error and her argument does not demonstrate that the judgment of the court was against the manifest weight of the evidence or that the evidence did not clearly and convincingly support the judgment. Furthermore, to the extent that Mother suggests that the termination of her parental rights is not supported by clear and convincing evidence and is against the manifest weight of the evidence due to legal error regarding reasonable efforts, determinations of reasonable efforts, and diligent efforts, her argument is not well taken in light of our finding that there was no error concerning these issues.

{¶31} Mother's sole assignment of error is overruled.

CONCLUSION

{¶32} Mother'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.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
CONCURS

CARR, J.,
CONCURS IN JUDGMENT ONLY, SAYING:

{¶33} Although I agree with the majority's decision to affirm the permanent custody decision, I do not join in its inquiry into whether CSB exerted reasonable efforts to reunify parent and child. As the majority correctly notes, the Ohio Supreme Court has held that the trial court was not required to make a finding at this later stage of the proceedings that the agency had exerted reasonable efforts. See *In re C.F.*, 2007-Ohio-1104, at ¶43. Because the trial court was not required to make such a finding, the agency had no burden at that point to demonstrate the

efforts that it had made to reunify this family. I do not agree with the majority's analysis insofar as it reaches the merits of Mother's reasonable efforts challenge.

APPEARANCES:

ADAM N. VAN HO, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.