

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: Ma. P.
 Mc. P.

C.A. No. 14CA0110-M

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE Nos. 2013 05 NE 0010
 2013 05 NE 0011

DECISION AND JOURNAL ENTRY

Dated: June 1, 2015

MOORE, Judge.

{¶1} Appellant, Christopher P. (“Father”), appeals from a judgment of the Medina County Court of Common Pleas, Juvenile Division, that terminated his parental rights to his two minor children and placed them in the permanent custody of Medina County Job and Family Services (“MCJFS”). This Court affirms.

I.

{¶2} Father is the natural father of M.P., a boy born July 14, 2008; and M.P., a girl born October 2, 2009. Father’s younger child and the children’s mother are not parties to this appeal.

{¶3} MCJFS filed a prior case against these parents on June 30, 2011. The police had removed the children from the home following a domestic dispute between the parents. Although the agency alleged that the children were dependent and neglected, the allegations of neglect were later dismissed. The parents agreed to an adjudication of dependency, a disposition

of temporary custody to MCJFS, and that they would work on the reunification goals of the case plan. The case plan focused on the parents addressing their own mental health and behavioral problems, the developmental delays of the children, and otherwise providing a suitable home for the children. Because the parents apparently complied with the requirements of that case plan, the children were returned to their custody under an order of protective supervision on May 24, 2012. Protective supervision was terminated and that case was closed on January 23, 2013.

{¶4} During April 2013, however, MCJFS opened a voluntary case with the family based on renewed concerns about the mother's mental health and substance abuse problems. MCJFS filed this involuntary case during late May, after Father called the agency and demanded that someone come get the children because he would be leaving them alone in ten minutes. He had been watching the children while the mother was out but, because she had not returned when he expected, he was not willing to stay with them any longer. On May 29, 2013, MCJFS filed this case, alleging that M.P. and M.P. were neglected and dependent children. The parents later agreed to an adjudication of dependency.

{¶5} As in the prior case, the case plan goals required Father to: demonstrate emotional stability after completing psychological and psychiatric evaluations and following all treatment recommendations; regularly attend supervised visits with the children and behave appropriately; and provide a safe, stable, and non-violent home environment for the children.

{¶6} Father received several different mental health diagnoses during this case, but all of the experts agreed that he had antisocial personality disorder, which is characterized by impulsive, erratic, dramatic, and angry behavior and a lack of empathy for how his behavior affects others. The mental health component of the case plan required Father to engage in

regular counseling and medication management to develop an ability to control his inappropriate behavior.

{¶7} For a period of approximately ten months at the beginning of this case, however, Father did not engage any mental health services and continued to suffer negative consequences from his inability to control his impulsive and threatening behavior. On August 13, 2013, Father was charged with, and later convicted of, crimes that included criminal damaging and disorderly conduct, following an incident during which he broke the front passenger window of the mother's vehicle and persisted in disorderly conduct after "reasonable warning or request to desist." R.C. 2917.11(E)(1)(3)(a). He served a brief period of incarceration relating to those crimes but still made no attempt to seek mental health treatment after his release.

{¶8} On December 18, 2013, Father was charged with crimes that included domestic violence against his sister, threatening domestic violence against two other family members, telecommunications harassment, disorderly conduct, criminal mischief, and criminal damaging. He was later convicted of domestic violence and criminal mischief and was incarcerated in the county jail for a total of 90 days.

{¶9} Father was released from the county jail during the middle of March 2014. Shortly afterward, he moved for a six-month extension of temporary custody. Two weeks later, MCJFS opposed Father's motion and alternatively moved for permanent custody of both children. Following a hearing on the competing dispositional motions, the trial court terminated Father's parental rights and placed M.P. and M.P. in the permanent custody of MCJFS. Father appeals and raises two assignments of error.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY TERMINATING FATHER'S PARENTAL RIGHTS AND GRANTING PERMANENT CUSTODY OF THE TWO CHILDREN TO [MCJFS] INSTEAD OF GRANTING FATHER'S MOTION FOR A SIX-MONTH EXTENSION OF THE CASE PLAN FOR REUNIFICATION WITH HIS TWO CHILDREN.

{¶10} Father's first assignment of error is that the trial court erred in granting permanent custody to MCJFS because the weight of the evidence warranted extending temporary custody rather than terminating his parental rights. 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* Former R.C. 2151.414(B)(1)¹ and 2151.414(B)(2); *see also In re William S.*, 75 Ohio St.3d 95, 99 (1996).

{¶11} The trial court found that the first prong of the permanent custody test had been satisfied because M.P. and M.P. could not be returned to either parent within a reasonable time or should not be returned to them. *See* R.C. 2151.414(E). Father does not dispute that finding. Instead, he argues that the evidence did not support the trial court's conclusion that permanent custody to MCJFS, instead of an extension of temporary custody, was in the best interests of the children.

¹ R.C. 2151.414(B)(1) was amended effective September 17, 2014.

{¶12} The trial court must conduct a best interest analysis to determine whether to place the child in the permanent custody of the agency or to extend temporary custody. If permanent custody was in the children's best interests, the alternative disposition of extending temporary custody was not. *See In re I.A.*, 9th Dist. Summit No. 26642, 2013-Ohio-360, ¶ 10. Moreover, the trial court would have authority to extend temporary custody only if it also found that Father had made "significant progress" on the case plan and that there was reasonable cause to believe that the children would be reunified with him or otherwise permanently placed during the extension period. R.C. 2151.415(D)(1). We agree with the trial court that MCJFS demonstrated by clear and convincing evidence that Father had not made significant progress on the case plan and that permanent custody was in the children's best interests.

{¶13} Considerable evidence was presented at the hearing that Father had not made significant progress on the reunification goals of the case plan. As explained in detail above, Father has a lengthy history of mental health problems that affect his ability to provide a suitable home for his children. Although he had been in and out of counseling for many years, he had never been willing to consistently engage in counseling to improve his dysfunctional behavior. Witnesses focused primarily on his untreated antisocial personality disorder, which was characterized by angry, impulsive, and inappropriate behavior. Prior to this case, Father had been involved in numerous incidents of domestic violence and other improper behavior that had resulted in criminal charges and convictions. During the majority of this case, Father did not engage in any mental health treatment and his inappropriate behavior continued, resulting in additional criminal convictions.

{¶14} According to one of his former counselors, antisocial personality disorder can be "challenging" to treat because counseling will only be effective if the client is open to modifying

his behavior and improving his coping skills. She explained that Father would attend counseling sessions and simply tell her about his problems rather than allowing her to guide their conversation toward creating treatment goals. Consequently, although Father attended several counseling sessions with her, he made no progress in resolving his behavioral problems.

{¶15} Approximately two months before the permanent custody hearing, Father re-engaged in counseling services. Although Father's current counselor testified that he had been in and out of counseling with her for many years, she did not explain whether he had made progress during his recent sessions. Father continued to demonstrate an inability to control his anger as recently as a few days before the hearing, when he came to MCJFS to pick up a gas card. Because the desk attendant was not immediately able to find the card, Father shouted profanities and derogatory comments at her and several other MCJFS employees who heard the commotion and came to assist her. The desk attendant hit the panic button to summon the police because she and other employees and clients in the area felt threatened by Father's behavior.

{¶16} Moreover, at the time of the hearing, Father did not have stable housing, had not completed a parenting evaluation or parenting classes, and had not been visiting the children regularly. Although his attendance rate had improved during the months prior to the hearing, he missed several scheduled visits with his children, even while he was not incarcerated. During the 14-month period that this case was pending, Father visited his children only seven times.

{¶17} MCJFS also presented clear and convincing evidence to establish that permanent custody, not an extension of temporary custody, was in the best interests of both children. When determining whether a grant of permanent custody is in the children's best interests, the juvenile court must consider all the relevant factors, including those enumerated in R.C. 2151.414(D): the interaction and interrelationships of the children, the wishes of the children, the custodial history

of the children, and their need for permanence in their lives. *See In re R.G.*, 9th Dist. Summit Nos. 24834, 24850, 2009-Ohio-6284, ¶ 11. “Although the trial court is not precluded from considering other relevant factors, the statute explicitly requires the court to consider all of the enumerated factors.” *In re Smith*, 9th Dist. Summit No. 20711, 2002 WL 5178, *3 (Jan. 2, 2002); *see also In re Palladino*, 11th Dist. Geauga No. 2002-G-2445, 2002-Ohio-5606, ¶ 24.

{¶18} Father’s interaction with his children during the 14-month period of this case was limited to seven supervised visits. His visits were never expanded because he did not attend regularly and had not complied with the goals of the case plan.

{¶19} During the time that the children had lived in a kinship home, on the other hand, they had been integrated into the family. Both children had developmental delays and behavioral problems, which were being addressed through Head Start, other intervention services, and the structure and stability in the kinship home.

{¶20} The custodial history of the children included a 14-month period during this case that they resided outside their parents’ custody. During the prior case, they lived outside their parents’ custody for 11 months. Between the two cases, the children had lived outside of their parents’ custody for almost two years. Given that they were only four and six years old at the time of the hearing, they had spent a much of their young lives outside their parents’ custody.

{¶21} Furthermore, the children were in need of a legally secure permanent placement because they had spent most of their lives moving back and forth between the custody of their parents and temporary placements. Because neither parent was able to provide them with a suitable permanent home at that time, and MCJFS had been unable to find any relatives who were willing and able to do so, the trial court reasonably concluded that such a placement would only be achieved by placing the children in the permanent custody of MCJFS. Because the

evidence clearly and convincingly supported the trial court's conclusion that permanent custody to MCJFS was in the best interests of M.P. and M.P., Father's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY CONSIDERING THE GUARDIAN AD LITEM'S REPORT AND RECOMMENDATIONS IN THIS CASE, WHERE SHE DID NOT COMPLY WITH THE MINIMUM REQUIREMENTS OF SUP.R. 48(D)(13).

{¶22} Father's second assignment of error is that the trial court committed reversible error by considering the report of the guardian ad litem because the guardian did not comply with several requirements of Sup.R. 48(D)(13). As Father argues, the record reveals that the guardian ad litem did not observe Father with the children, ascertain the wishes of the children, or interview Father. *See* Sup.R. 48(D)(13)(a), (c), and (d).

{¶23} Father asserts on appeal that, because the guardian ad litem failed to comply with these requirements of Sup.R. 48, the trial court should not have considered her report or testimony. He relies on *Nolan v. Nolan*, 4th Dist. Scioto No. 11CA3444, 2012-Ohio-3736, which is distinguishable for several reasons. To begin with, the father in *Nolan* argued, and the appellate court agreed, that the report of the guardian ad litem should not have been considered by the trial court because the guardian's investigation "fell far short" of the minimum standards of Sup.R. 48(D)(13). *Id.* at ¶ 25.

{¶24} The *Nolan* court emphasized that the guardian ad litem failed to conduct a bare bones investigation that would support his recommendation that the mother should be the residential parent. For example, the guardian ad litem did not: visit the home of either parent, talk to the child without a parent present, interview the child's school or medical providers about his behavioral or mental health issues, or interview or investigate the mother's live-in boyfriend.

Id. Recognizing that Sup.R. 48 “does not have the force of law,” however, the *Nolan* court limited its holding “to the specific facts of this case.” *Id.* at ¶ 27.

{¶25} Unlike *Nolan*, the investigation conducted by the guardian ad litem in this case complied with Sup.R. 48(D)(13) in most respects. Father points only to her failure to conduct a deeper investigation into his suitability as a parent and to ascertain the wishes of the children. Otherwise, Father does not dispute that the guardian ad litem met with all other parties several times and otherwise fulfilled her duties under Sup.R. 48(D)(13).

{¶26} More significantly, the father in *Nolan* argued in the trial court that the testimony and report of the guardian ad litem should be stricken from the record. *Id.* at ¶ 22. In this case, although Father cross-examined the guardian ad litem about her compliance with some of the requirements of Sup.R. 48, he raised no objection to her testimony and/or report being admitted and considered by the trial court. Father’s attempts to discredit the reliability of the guardian’s report and recommendation through cross-examination went to the weight to be assigned to her opinion, not its admissibility. The trial court explicitly recognized in its judgment that the guardian ad litem had failed to comply with some of the requirements of Sup.R. 48(D)(13) and, for that reason, would “assign the weight, if any,” to her recommendation that it deemed appropriate under the circumstances. Father has failed to demonstrate that the trial court erred by refusing to apply the reasoning of *Nolan* to strike the report and testimony of the guardian ad litem from the record. Father’s second assignment of error is overruled.

III.

{¶27} Father’s assignments of error are overruled. The judgment of the Medina 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 Medina, 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(C). 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.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
CONCURS.

CARR, P. J.
CONCURRING.

{¶28} I concur in the majority judgment, but write separately to express my concern about the unexplained failure of the guardian ad litem to observe any of Father's visits with the children, ascertain the wishes of the children, or interview Father. *See* Sup.R. 48(D)(13)(a), (c), and (d). This case involves the termination of Father's fundamental right to raise his children

and, for that reason, numerous procedural protections have been put in place by the General Assembly and the Ohio Supreme Court, including Sup.R. 48. Nonetheless, Father failed to preserve for appellate review the issue of whether the report and testimony of the guardian ad litem should have been stricken based on her failure to comply with the requirements of Sup.R. 48(D)(13).

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

JENNIFER A. MOORE, Attorney at Law, for Appellee.

MARY ELLEN LESLIE, Guardian ad Litem.