

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: S.G.

C.A. No. 15AP0005

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 13-0884-AND

DECISION AND JOURNAL ENTRY

Dated: June 15, 2015

CARR, Judge.

{¶1} Appellant, Brian J., appeals from a judgment of the Wayne County Court of Common Pleas, Juvenile Division, that terminated his parental rights to his minor child, S.G., and placed her in the permanent custody of Wayne County Children Services (“CSB”). This Court affirms.

I.

{¶2} S.G. was born on June 26, 2013, to unmarried parents, Autumn G. (“Mother”) and Brian J. (“Father”). At the time of S.G.’s birth, Mother had an existing custody case with CSB regarding her three older children. Mother recently surrendered her parental rights to two of those children, while the third remained in the temporary custody of the agency. Father was not a party to that action.

{¶3} Two days after S.G.’s birth, CSB filed a complaint, alleging that S.G. was a dependent child under R.C. 2151.04(C). The agency sought temporary custody or, alternatively,

protective supervision of the child. The allegations in the complaint focused on Mother because paternity had not yet been established. The complaint included allegations that Mother had a history of mental health difficulties, recent criminal convictions for assault and disorderly conduct, and a recent psychological diagnosis that put her at risk for physical abuse and neglect to children. CSB also claimed that Mother had a history of relying on men for housing and financial support and that many of her relationships have been volatile. Finally, CSB alleged that Mother had not engaged in services to mitigate the risk of harm to S.G.

{¶4} The trial court initially permitted Mother to retain custody of the infant with protective supervision in CSB. Within two weeks, however, the court ordered the removal of S.G. from the home because of a domestic violence incident between Mother and Brad Clark, the man with whom she was in a current relationship. S.G. was placed in foster care.

{¶5} In the meantime, Father established paternity of S.G. and, on August 15, 2013, filed a pro se motion to obtain visitation with S.G. He expressed a desire to visit S.G. and a willingness to cooperate with CSB and the juvenile court.

{¶6} On August 22, 2013, the case proceeded to adjudication and disposition. Both parents agreed to a finding of dependency under R.C. 2151.04(C) and to a disposition of temporary custody to CSB. The trial court adopted the proposed case plan, which only contained objectives for Mother at that point, and advised CSB to add services for Father if necessary. Mother's case plan addressed parenting skills and education, mental health issues, substance abuse, and stable housing. On September 17, 2013, the trial court approved case plan objectives for Father, focusing on mental health concerns and substance abuse. Father was offered supervised visits with S.G. twice weekly at CSB. Father was on probation and was required to comply with those terms as well.

{¶7} Initially, Father appeared to be very motivated to work on his case plan as well as on the terms of his probation as he sought to obtain custody of his daughter. He did very well in cooperating with services. According to the caseworker, “he was doing all that [] was asked of him.”

{¶8} After six months of progress, however, things began to change and CSB became concerned about Father. Father missed counseling appointments, stopped attending visitation, and his behavior was noticeably different. As a consequence, on May 30, 2014, CSB moved for permanent custody of S.G. At the start of the permanent custody hearing, Mother voluntarily surrendered her parental rights. The hearing proceeded upon consideration of Father’s parental rights. At the conclusion of the hearing, the trial court granted permanent custody of S.G. to CSB. Father filed a notice of appeal and has assigned three errors for review.

II.

ASSIGNMENT OF ERROR I

THE WAYNE COUNTY JUVENILE COURT ERRED WHEN IT FOUND THAT THE MINOR CHILD WAS ABANDONED[.]

{¶9} Father contends that the trial court erred in determining that S.G. was abandoned in satisfaction of the first prong of the permanent custody test.

{¶10} R.C. 2151.414(B)(1) establishes a two-part test for courts to apply when determining whether to grant a motion for permanent custody to a public services agency. The statute requires the court to find, by clear and convincing evidence, that: (1) one of the enumerated factors in R.C. 2151.414(B)(1)(a)-(e) apply, and (2) permanent custody is in the best interest of the child. R.C. 2151.414(B)(1). Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts

sought to be established. *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶11} The factors contained within R.C. 2151.414(B)(1)(a)-(e) are alternative findings, and only one must be met in order for the first prong of the permanent custody test to be satisfied. *See, e.g., In re M.M.*, 9th Dist. Lorain Nos. 10CA009744, 10CA009745, 10CA009746, 10CA009747, 2010-Ohio-2278, ¶ 12. While Father challenges the abandonment finding, he has made no argument regarding the trial court's alternative finding that the child cannot or should not be placed with a parent within a reasonable time based on the demonstration of a lack of commitment toward the child pursuant to R.C. 2151.414(B)(1)(a) and R.C. 2151.414(E)(4). Thus, notwithstanding any questions regarding the finding of abandonment, the first prong of the permanent custody test is satisfied by the alternative finding made by the trial court and left unchallenged by Father. Because there is an alternative finding on the first prong of the permanent custody test and Father has not challenged that finding, Father has failed to demonstrate prejudice as a result of the trial court's finding that the child was abandoned. Father's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF S.G. TO [CSB] BECAUSE [ITS] DETERMINATION THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶12} Father next challenges the trial court finding on the second prong of the permanent custody test and asserts that the trial court erred in finding that permanent custody was in the best interest of the child.

{¶13} In determining the best interest of the child, the juvenile court must consider all the relevant factors, including those enumerated in R.C. 2151.414(D): the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, the child's need for permanence in his life, and whether any of the factors in divisions R.C. 2151.414(E) (7) to (11) apply in relation to the parent and child. *See* R.C. 2151.414(D). "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.

{¶14} The first best interest factor requires consideration of the relevant personal interactions and interrelationships of the child. Father initially worked very hard on his case plan and created a bond with his daughter. He was present at her birth and consistently expressed his love for S.G. as well as a desire to provide for her.

{¶15} By December 2013, Father had completed a parenting class and regularly attended a Men of Honor program, substance abuse appointments, and mental health appointments. He was consistently visiting with his daughter. Mental health professionals reported that Father had been diagnosed as bipolar manic moderate, but he was stable and his referral problems were being addressed. In addition, Father was compliant with the terms of his probation. Father even voluntarily engaged in more programs than were required by his case plan.

{¶16} In January 2014, visits were increased and were moved to Father's home. All of his drug screens were negative. Father was receiving disability insurance and was seeking part-time work. The caseworker stated that, at that point, Father "had really worked hard for [S.G.]"

and “went above and beyond the case plan.” The case aide described Father’s conduct during visits as confident, loving, attentive, and well prepared with materials and supplies. The caseworker said that the infant was happy and comfortable during her visits with Father. She believed that S.G. acted differently with Father than with her or a case aide and that Father appeared to be bonded to her.

{¶17} Then, at the end of February and beginning of March 2014, Father began having difficulties. Father’s grandmother, who had been a significant support in his life, died. His compliance with case plan services began to change drastically. He failed to maintain contact with his caseworker and service providers, and he violated the terms of his probation. Father relapsed into substance abuse and no longer maintained his apartment. He stopped visiting with his daughter. His last visit was on April 8, 2014.

{¶18} During Father’s last few visits with S.G., the caseworker developed concerns because Father seemed “kind of erratic and was just real antsy and anxious.” At his last visit, Father told the case aide that he was battling depression and had some schizophrenic episodes that he had not had in years. She believed that his demeanor suggested that he was visibly struggling “within himself” and he appeared to be depressed. Father assured the case aide that he was going to get help because he did not want his daughter to have to contend with this. Father stopped attending visits and services, and he maintained no contact with his caseworker either. The caseworker was concerned about Father, but was unable to locate him until September 2014, despite repeated visits to his apartment and contacting Father’s counselor, case manager, and probation officer.

{¶19} When the caseworker finally located Father, she discovered that his whole demeanor had changed. While he had been attending services and taking his medication, he was

calm and could carry on a conversation. Now he was very agitated and worked up. She explained that his train of thought was not fluid and his thoughts were disorganized. Further, he seemed to have lost a significant amount of weight. Father told her that he wanted to continue with services, but that there was a warrant for his arrest for failing to appear at a sentencing hearing. The caseworker recommended that Father address his warrant, and she would assist him with reengaging in services. Eventually, Father was sentenced to serve 24 days in jail, and he was scheduled to begin that sentence shortly after the permanent custody hearing. At the time of the permanent custody hearing, Father was not involved in counseling or in any mental health services. Regarding the other portions of his case plan, Father did not have stable housing and had no employment except for odd jobs and a volunteer position in which he earned store credits.

{¶20} Father testified in his own behalf. He stated that in March and April 2014, he had become overwhelmed with his many commitments, the pressure and stress of court situations, not being able to understand everything, and the death of his grandmother. He stated that he had had panic attacks for a long time, but most recently after his grandmother's death. He used marijuana in an effort to deal with them. He started feeling that no matter what he did, it was never enough.

{¶21} Father testified that after he was prescribed Abilify, he was unable to sleep and was jittery. Within a couple days, he felt "totally like off the wall." Then, from mid-March 2014 until late April 2014, he was given Buspar and immediately became very depressed and slept constantly. He said the medications basically put him back into the psychosis that he had not experienced in so long. He was unable to get back to the conditions he experienced prior to February 2014.

{¶22} Father testified that he did not intend to abandon S.G. and continues to love her. He knew that he needed treatment, but did not feel he could effectively work with the agency during that time. He also did not want his daughter to have to deal with his condition. Father believed that he could be able to care for S.G. within several months, if he had people working with him and got services. He wanted his daughter to know he tried “to fight for her,” but he knew he was starting from the very beginning again. He asked the court for a second chance.

{¶23} There was little evidence of relationships between the child and other relatives. Father’s mother attended one visit at Father’s home. Father’s grandmother unfortunately passed away during this case.

{¶24} The caseworker testified that S.G. gets along well with the foster family. She appears to be attached to them and shows affection towards them, especially the foster mother. They provide for her needs. According to the caseworker, they are interested in adopting the child.

{¶25} The wishes of the child were conveyed by the guardian ad litem. In her report, she concluded that permanent custody was in the best interest of the child. The guardian ad litem attended the hearing and stated that she had not changed her opinion after hearing the evidence presented.

{¶26} S.G. resided with Mother for the first three weeks of her life. During that time, the child was also under the protective supervision of CSB. Then, because of a domestic violence incident between Mother and her current boyfriend, S.G. was removed from Mother’s home and placed with a foster family. There was no evidence that Father was involved in those events. S.G. resided with a single foster family for the next fifteen months until the time of the permanent custody hearing.

{¶27} As to the fourth best interest factor, the caseworker testified that she did not believe Father could provide for the child's needs at that time or within a reasonable time. There were no suitable friends or relatives willing to provide for her care. The caseworker stated that S.G. needs stability and permanency and that permanent custody was in her best interest.

{¶28} Father clearly loves his daughter and initially made significant strides, but unfortunately, he was not able to maintain that progress and overcome barriers to reunification. Father has not been able to demonstrate an ability to provide a stable, secure permanent home for her.

{¶29} This Court has carefully reviewed the evidence before the trial court. We conclude that the evidence was sufficient to support the judgment of the trial court. Furthermore, we cannot say that the trial court clearly lost its way in concluding that permanent custody to CSB was in the best interest of the child. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20. Father's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN ALLOWING THE CASEWORKER AND PROBATION OFFICER TO TESTIFY REGARDING [POSITIVE] DRUG SCREENS[.]

{¶30} Father argues that the trial court erred in allowing the caseworker and probation officer to testify regarding two positive drug test results.

{¶31} The CSB caseworker attempted to introduce evidence of two positive drug test results and Father successfully argued that the caseworker was not a qualified witness to properly authenticate them. The trial court denied the admission of the test results. However, the trial court permitted the caseworker and probation officer to testify about the results. On appeal, Father asserts that permitting such testimony was error.

{¶32} CSB agrees with Father's position, but also asserts that any error in allowing the testimony of the caseworker and probation officer about the test results is harmless because the record otherwise contains sufficient admissible evidence regarding Father's drug use.

{¶33} Father took the stand on his own behalf and testified, on direct examination, to his use of marijuana during the course of the trial court proceedings as well as to his previous use of both marijuana and cocaine. Father also admitted his use of drugs to the case aide, caseworker, and probation officer, and they each testified to Father's admissions. Evidence of Father's lack of stable housing and mental health issues further demonstrated that Father was not able to provide a stable permanent home for S.G. at the present time or within a reasonable time. Consequently, Father was not prejudiced by the allowance of testimony by the caseworker and probation officer regarding the drug test results. In his supporting argument, Father also asserts that testimony elicited by the trial judge should not be used to render this assignment of error harmless. We conclude that evidence of Father's drug use was otherwise established without considering the answers elicited by the trial judge. Father's third assignment of error is overruled.

III.

{¶34} Father's three assignments of error are 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(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.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

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

DANIEL R. LUTZ, Prosecuting Attorney, and MELODY L. BRIAND, Assistant Prosecuting Attorney, for Appellee.

NIKKI REED, Guardian ad Litem.