

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: T.B.-W.

C.A. No. 27544

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 13 06 0426

DECISION AND JOURNAL ENTRY

Dated: March 18, 2015

CARR, Judge.

{¶1} Appellant, Rasha P. (“Mother”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child and placed him in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I.

{¶2} Mother is the natural mother of T.B.-W., born March 10, 2009. The child’s father (“Father”) was a party to the trial court proceedings but is not a party to this appeal.

{¶3} This family’s history with CSB began in 2010 when T.B.-W. was removed from his parents’ custody because he sustained head injuries when Father pushed his stroller down a hill during an altercation with Mother. T.B.-W. was later adjudicated an abused and dependent child and was placed in the temporary custody of CSB for several months. Father was ordered to

have no contact with the child. In addition to abiding by the no contact order, Mother was required to attend counseling and parenting classes and maintain suitable income and housing.

{¶4} After a few months, the trial court found that Mother had made substantial progress on the reunification goals of the case plan and returned T.B.-W. to her custody under an order of protective supervision. Although the trial court later terminated the order of protective supervision and closed the case, it issued an ongoing order that Father “shall have no contact” with T.B.-W. “until further order,” and that the court would consider a further order only upon a written motion filed by Father. Father never sought or obtained a review, modification, or termination of the no contact order. On February 18, 2011, the trial court closed the prior case.

{¶5} The current case began during June 2013, when T.B.-W., then four years old, was removed from Mother’s custody pursuant to Juv.R. 6 after police discovered him at home alone and suffering from serious, untreated injuries, which were apparent from the bruising and swelling on his face. T.B.-W. was taken to Akron Children’s Hospital, where he was diagnosed with fractures of the sinus and orbital bones, rib fractures that were in different stages of healing, and a possible liver laceration. A subsequent dental exam revealed that he had also sustained serious injury to all of his teeth.

{¶6} CSB also discovered that, despite the no contact order, Mother had resumed a live-in relationship with Father. At the time the child was found alone in the home, Mother was hospitalized with her own serious injuries that had resulted in the death of her eight-month-old fetus. Mother had been transported from her home by ambulance and apparently left T.B.-W. in the care of Father and another adult, who later left him home alone.

{¶7} Neither parent accepted responsibility for causing the recent or past injuries to T.B.-W. or for failing to protect him or seek medical treatment for his injuries. Mother and

Father would continue to deny that Father was responsible for the injuries to Mother and/or T.B.-W., claiming that Mother had inflicted her own injuries and that T.B.-W. had fallen at the park. They offered no justification for failing to seek medical treatment after he was injured, however.

{¶8} It was ultimately determined through criminal proceedings that Father beat Mother for approximately one hour while another adult in the home watched. Father injured four-year-old T.B.-W. when he stepped in to try to protect Mother. Father was convicted of murder and other felonies for killing Mother's unborn child and for inflicting serious injuries on Mother and T.B.-W. Although CSB was not able to verify that Father had also caused T.B.-W.'s prior rib fractures, it believed that he had, given Father's history of harming the child and the child's extreme fear of Father.

{¶9} The case plan goals for Mother were similar to those of the 2010 case, which focused on her developing the ability and determination to provide a safe and stable environment for T.B.-W. Although Mother would tell the caseworker and her counselor that she was ending her relationship with Father, she continued to communicate with him via letters and daily telephone calls. Moreover, unbeknownst to CSB, Mother had complied with Father's requests that T.B.-W. make and send him drawings and speak to him on the telephone on multiple occasions.

{¶10} After T.B.-W. spoke to Father on the phone, his behavior seriously regressed and CSB soon learned that Mother was encouraging a relationship between Father and T.B.-W., despite the no contact order, the case plan requirements, or the negative effect that Father had on her child.

{¶11} CSB moved for permanent custody because Mother continued to demonstrate a lack of insight into the need to protect T.B.-W. from Father. Following a hearing, the trial court

found that T.B.-W. could not be returned to either parent within a reasonable time or should not be returned to them and that permanent custody was in his best interest. Mother appeals and raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ABUSED ITS DISCRETION AS A MATTER OF LAW AND COMMITTED PLAIN ERROR WHEN IT GRANTED PERMANENT CUSTODY TO [CSB] DESPITE THE FACT THAT [CSB] HAD NOT MADE REASONABLE EFFORTS TO PREVENT FURTHER REMOVAL.

{¶12} Mother’s first assignment of error is that the trial court erred in terminating her parental rights because CSB failed to make reasonable efforts to reunify T.B.-W. with either parent or a member of their extended family. Mother concedes that she failed to raise these issues in the trial court but argues that the trial court’s termination of her parental rights without the requisite reunification efforts constituted plain error. We disagree.

{¶13} Assuming, without deciding, that Mother has standing to challenge CSB’s efforts to reunify T.B.-W. with Father, she has failed to demonstrate that CSB’s lack of reunification efforts with Father prejudiced any of the parties. Mother relies on *In re S.R.*, 9th Dist. Summit No. 27209, 2014-Ohio-2749, in which this Court found that the trial court committed plain error by terminating parental rights because the father had not been included on the case plan throughout the case. The reasoning of *In re S.R.* was directly tied to the unique circumstances of that case, including that CSB knew the identity and location of the father, the father had contacted CSB and purported to be interested in providing a home for the child, and there had been no judicial finding under R.C. 2151.419(A)(2) to relieve the agency of its obligation to make reasonable reunification efforts. In fact, there was “nothing in the record to suggest that any of the R.C. 2151.419(A)(2) circumstances pertained to Father[.]” *Id.* at ¶ 40. A

demonstration of plain error arose in *In re S.R.* because the father and child were deprived of a potential opportunity to be reunified and there was nothing in the record to suggest that reunification could not have been accomplished with reasonable reunification efforts.

{¶14} The circumstances in this case are completely different from those in *In re S.R.* Here, the trial court granted CSB a reasonable efforts bypass under R.C. 2151.419(A)(2) because Father had been convicted of murdering Mother’s unborn child, a sibling of T.B.-W. *See* R.C. 2151.419(A)(2)(a)(i). Moreover, Father was subject to a no contact order that prohibited him from having any contact with T.B.-W. and was serving a term of incarceration of 20 years to life. There was no possibility that Father could be reunified with T.B.-W. during his childhood. Consequently, Mother has failed to demonstrate the trial court’s failure to include Father on the case plan prejudiced any of the parties or rose to the level of plain error.

{¶15} Mother also argues that CSB failed to make reasonable efforts to reunify T.B.-W. with her. Unlike Father, Mother was included on the case plan and CSB had an obligation to make “reasonable efforts” to help her achieve the reunification goals. R.C. Chapter 2151 does not define the term reasonable efforts, but that term has been construed to mean “[t]he state’s efforts to resolve the threat to the child before removing the child or to permit the child to return home after the threat is removed[.]” *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 28, quoting Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U.Pub.Int.L.J. 259, 260 (2003).

{¶16} Mother fails to point to any deficiency in reunification efforts exerted by CSB except to suggest that the agency should have connected her with service providers sooner. Although Mother suggests that she eagerly worked toward reunification with her child, she was not forthcoming with her counselor or the caseworker. Mother told CSB and her counselor that

she was ending her destructive relationship with Father, but she continued to maintain telephone contact with him. More significantly, despite Father's physical separation from the family through a lengthy term of imprisonment, Mother violated the no contact order and the goals of the case plan by allowing T.B.-W. to speak to Father on the telephone and draw and send him pictures. Rekindling that destructive relationship caused the child's behavior to regress because he no longer felt that he was safe from his abuser.

{¶17} As will be explained in more detail below, the record reveals that the trial court's failure to reunify Mother and T.B.-W. was caused by a lack of sincere effort by Mother, not by any shortcomings of CSB. Mother's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ABUSED ITS DISCRETION AS A MATTER OF LAW WHEN IT GRANTED PERMANENT CUSTODY TO [CSB], AS ITS DECISION WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶18} Mother next argues that the evidence failed to support the trial court's permanent custody decision. 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 children 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.

{¶19} The trial court found that the first prong of the permanent custody test had been satisfied because T.B.-W. could not be returned to Mother within a reasonable time or should not

be returned to her based, in part, on its factual finding under R.C. 2151.414(E)(1) that Mother had failed to substantially remedy the conditions that caused him to be placed outside her home.¹ It also found that permanent custody was in the best interest of T.B.-W.

{¶20} In this case, as in the 2010 case, the primary problem in the home was domestic violence. Consequently, the most important reunification goal for Mother was to demonstrate that she could protect herself and her child from domestic violence. Although Mother points to testimony that she was “cooperative” with CSB and service providers and that she had made some progress on the case plan, the record further reveals that Mother also lied to and/or withheld pertinent information from CSB and her service providers. Specifically, although Mother had started counseling, she continued to be manipulated by Father and continued to place his needs and wants ahead of those of her child.

{¶21} At the time of the hearing, Mother had been in counseling for approximately five months and her counselor testified that her attendance was “good.” During her early sessions, however, Mother continued to tell the counselor, as she had told the caseworker, that her own injuries had been self-inflicted. It was not until several months after the incident that Mother finally admitted to the caseworker and her counselor that Father had inflicted her injuries.

{¶22} The counselor testified that her sessions with Mother were more focused on Mother ending the cycle of violence perpetrated by Father against her rather than against her child. Although Mother told the counselor that she was ending her relationship with Father, she did not disclose that she continued to have daily telephone contact with him. The caseworker

¹ Although the trial court made an alternate finding that R.C. 2151.414(E)(2) was satisfied because Mother had a chronic mental illness that prevented her from caring for her child, this Court confines its review to the trial court’s finding under Section 2151.414(E)(1).

testified at the hearing that she still did not know whether Mother had ended her relationship with Father because she had lied to her about it so many times.

{¶23} CSB remained most concerned that, throughout this case, Mother gained no insight into her need to protect T.B.-W. or assume responsibility for his well-being. She never acknowledged to her counselor, the caseworker, or the guardian ad litem that Father had harmed T.B.-W. Moreover, even if her four-year-old child had been injured accidentally, she accepted no responsibility for him being injured or for her failure to get him medical treatment.

{¶24} The evidence before the trial court was sufficient to produce in the mind of the trier of fact a firm belief that Mother had failed to substantially remedy the conditions that had caused T.B.-W. to be placed outside the home. Therefore, CSB presented clear and convincing evidence to establish the first prong of the permanent custody test.

{¶25} CSB also presented clear and convincing evidence that permanent custody was in the best interest of T.B.-W. Although Mother argues that a six-month extension of temporary custody was in the best interest of T.B.-W., she has not assigned error to the trial court's failure to grant her request for a six-month extension.

{¶26} 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 child, his wishes, the custodial history of the child, and his need for permanence in his life. *See In re R.G.*, 9th Dist. Summit Nos. 24834 and 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.

{¶27} During this case, the interaction between Mother and T.B.-W. was limited to supervised visits because Mother failed to make substantial progress on the goals of the case plan. After CSB confirmed that Mother was allowing telephone contact between T.B.-W. and Father, her visits were cut back and she was no longer permitted to use a telephone during the visits. T.B.-W. told his counselor and his aunt that he had spoken to Father on the telephone two or three different times. When the caseworker asked Mother about allowing the child to speak to Father on the phone, she responded that T.B.-W. was confused and that he had spoken to his uncle, not Father. Because Father was incarcerated and his telephone calls were recorded, CSB was able to verify that Mother had, in fact, allowed the child to speak directly to Father during more than one telephone call between Father and Mother.

{¶28} Several witnesses testified about observing a serious regression in the child's behavior after he had telephone contact with Father. T.B.-W. stopped communicating about his feelings, and became defiant, angry, and aggressive. He acted out by being physically combative and throwing and kicking things. His behavior problems led to his removal from his first foster home and subsequent placement and removal from the home of a relative. His counselor explained that, because Mother provided a "conduit to [Father,]" much of the progress that the child had made in counseling to start feeling that he was safe had been lost because he no longer felt insulated from his abuser.

{¶29} In the foster home, however, T.B.-W. felt safe and secure and was making progress addressing his developmental delays because he was receiving one-on-one attention each day. He was living in a foster-to-adopt home but, because he had been there for only one month, CSB had not yet asked the foster parents if they were interested in adoption.

{¶30} The wishes of the child were expressed through the guardian ad litem. T.B.-W. told her that he loves Mother but wants to stay in his current foster home. The guardian ad litem also gave her opinion that permanent custody was in the best interest of T.B.-W. She was most concerned about Mother's failure to protect him from harm and that, after he did sustain serious injuries, she failed to get him medical treatment.

{¶31} T.B.-W. was five years old at the time of the permanent custody hearing and, by that time, he had been the subject of two separate abuse and dependency cases and had spent more than one and one-half years living in temporary placements. While he resided in the custody of his parents, he was exposed to significant ongoing violence, both as a witness to Mother's abuse and himself as a victim of Father's physical abuse.

{¶32} T.B.-W. had been in counseling with a trauma specialist throughout this case. He told the counselor that his father hurt him and that he was afraid of him, but he never offered any details because his counseling had not progressed to the point that he would talk about the underlying abuse. The counselor explained that T.B.-W. would need long term counseling because the ongoing violence that he had experienced during his early childhood had "an enormous" negative effect on him. She further testified that, during her 20-year counseling career, she had never counseled a client who had experienced such a degree of violence toward a mother and child.

{¶33} T.B.-W. had spent much of his life in temporary placements and was in need of a legally secure permanent placement. Because he was suffering from post-traumatic stress disorder from his exposure to ongoing violence as a young child, his counselor testified that it was essential that he live in a safe and stable environment. Neither parent was able to provide a

suitable home for T.B.-W. at that time and CSB had been unable to find any suitable family members who were willing and able to do so.

{¶34} Consequently, the trial court reasonably concluded the permanent custody was in the best interest of T.B.-W. Mother's second assignment of error is overruled.

III.

{¶35} Mother's assignments of error are 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(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:

KANI HARVEY HIGHTOWER, Attorney at Law, for Appellant.

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