

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: L.C.

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JUDGES:

Hon. Patricia A. Delaney, P.J.
Hon. Craig R. Baldwin, J.
Hon. Andrew J. King, J.

Case No. 2023CA0043

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2022JCV00072

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

August 25, 2023

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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Guardian ad Litem

King, J.

{¶ 1} Appellant J.C. ("appellant" or "father") appeals the April 12, 2023 judgment of the Stark County Court of Common Pleas, Juvenile Division, which terminated his parental rights with respect to his minor child ("L.C.") and granted permanent custody of L.C. to appellee Stark County Department of Job and Family Services ("SCJFS").

FACTS AND PROCEDURAL HISTORY

{¶ 2} This matter began as a voluntary, non-court case in August of 2021. L.C., born April 23, 2019, was living with mother, mother's paramour P.B., and her half-sibling. At that time, P.B. was thought to be the father of L.C. The family was experiencing homelessness and mental health challenges. SCJFS paid for the family to stay in a hotel while they sought appropriate housing. The family secured housing but was evicted shortly thereafter. Thus, their homelessness and instability continued. Additionally, mother was neglectful of L.C.'s medical and educational needs, was using illicit drugs, and had threatened to harm L.C.

{¶ 3} On January 24, 2022, law enforcement placed L.C. in the emergency custody of SCJFS pursuant to Juv.R. 6. The same day, SCJFS filed a complaint alleging dependency and neglect of L.C. and an emergency shelter care hearing was held. The trial court found SCJFS had made reasonable efforts to prevent the need for removal of L.C., and that continued placement with mother was contrary to L.C.'s best interests. The trial court therefore approved and adopted the pre-adjudicatory orders requested by SCJFS and granted temporary custody of L.C. to SCJFS.

{¶ 4} On February 18, 2022, SCJFS filed an amended complaint listing appellant herein as father of L.C. An adjudicatory hearing was held on April 19, 2022. The trial court

found L.C. to be dependent and placed her in the temporary custody of the SCJFS. Father appeared for the hearing and the trial court found he had been properly served with the complaint. The trial court additionally found father lives in Florida and was unaware of the concerns involving L.C. The court adopted the initial case plan, found SCJFS had made reasonable effort to finalize permanency planning, and compelling reasons existed to preclude a filing for permanent custody. The court directed SCJFS to explore placement of L.C. with father pursuant to the Interstate Compact for the Placement of Children ("ICPC"). Father visited with L.C. after the hearing, but cried thorough the first half of the visit. It therefore took L.C. most of the visit to begin to feel comfortable with father.

{¶ 5} The trial court reviewed the case on July 21, 2022, approved and adopted the case plan, found SCJFS had made reasonable efforts to finalize permanency planning and ordered status quo. By this time, due to behavioral issues, L.C. and her half-sibling were in their fourth foster placement since the case began but L.C. was doing well in that placement. Father had not visited L.C. since the adjudicatory hearing in April, 2022.

{¶ 6} On December 20, 2022, SCJFS filed a motion seeking permanent custody of L.C. The motion alleged L.C. could not be placed with father in a reasonable amount of time, that father had abandoned L.C., and that permanent custody was within L.C.'s best interest. SCJFS alleged father was emotionally unstable, had failed to engage in mental health counseling and parenting classes, and had limited contact with the child during her life. On the same day the trial court reviewed the case. It approved and adopted the case plan, found SCJFS had made reasonable efforts to finalize permanency planning, found SCJFS had made extensive efforts to identify and engage appropriate kinship placement, and ordered status quo. Father did not attend the hearing. The trial

court found father had failed to cooperate with SCJFS's inquiries regarding his housing arrangement and employment, and had further failed to cooperate with the ICPC process.

{¶ 7} On February 23, 2023, a hearing was held on SCJFS's motion before Judge Jim D. James. Father was properly notified of the hearing but failed to attend. Father's attorney advised the trial court that father had indicated he could afford to get to Cleveland, but not from Cleveland to Canton. Counsel for father requested a continuance, but the trial court denied the same.

{¶ 8} SCJFS caseworker Amy Craig was the sole witness. She testified she was the assigned caseworker and outlined the above stated history. She additionally testified she requested father find and engage in mental health and parenting services in his home state of Florida. Father failed to locate any such services until approximately a month before the February 23, 2023 hearing, when he reported he had found services, but could not afford them. He failed to provide contacts for these services until a week before the hearing. Father's contact with Craig was sporadic throughout the life of the case which made it difficult to provide services for him. The only contact father ever had with L.C. was once in April, 2022. Due to the child's age, behavior issues, and lack of speech, and scheduling conflicts, video visits were not conducted. Father requested photos of L.C. and Craig sent him photos and a video.

{¶ 9} Craig testified she initiated an ICPC in Florida to assess father's home, but father failed to cooperate. When workers called, father would hang up on them. He further refused to allow anyone into his home – a one-bedroom apartment he shares with his mother. Craig explored several potential kinship placements for the child, but none were willing or appropriate.

{¶ 10} Craig stated L.C. is in her fourth foster home and is thriving. L.C. sees a behavioral therapist to address her behavior issues, and her speech and vocabulary have improved since she has been enrolled in preschool. L.C. is also placed with her half sibling. Craig testified the current placement has potential for adoption.

{¶ 11} Attorney Ralph Lacki served as Guardian ad Litem in this matter. He submitted a final report and addressed the trial court during the hearing. Attorney Lacki stated father had never contacted him, and that L.C. never asks about her father. He stated L.C. is in her best placement since the beginning of the case and opined permanent custody was in the child's best interest.

{¶ 12} On April 12, 2023 the trial court issued its findings granting permanent custody to SCJFS and terminating father's parental rights. The trial court found L.C. could not be placed with father within a reasonable time, that father had abandoned the child, and that granting permanent custody to SCJFS was in the child's best interest.

{¶ 13} Father filed an appeal and the matter is now before this court for consideration. He raises one assignment of error as follows:

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{¶ 14} "THE TRIAL COURT'S DECISION TO TERMINATE FATHER'S PARENTAL RIGHTS WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. "

{¶ 15} In his sole assignment of error, father argues the trial court's decision to grant permanent custody to SCJFS and terminate his parental rights is not supported by clear and convincing evidence and is against the manifest weight of the evidence. We disagree.

Standard of Review

{¶ 16} Sufficiency of the evidence "is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict [decision] is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶ 17} On review for manifest weight, the standard in a civil case is identical to the standard in a criminal case: a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury [or finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction [decision] must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). In *Thompkins*, supra, at 387, quoting Black's Law Dictionary 1594 (6th Ed.1990), the Supreme Court of Ohio explained the following:

Weight of the evidence concerns "the inclination of *the greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find *the greater amount of credible evidence* sustains the issue which is to be

established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*." (Emphasis sic.)

{¶ 18} In weighing the evidence, however, we are always mindful of the presumption in favor of the trial court's factual findings. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517.

Permanent Custody Considerations

{¶ 19} R.C. 2151.414(B)(1) states permanent custody may be granted to a public or private agency if the trial court determines by clear and convincing evidence at a hearing held pursuant to division (A) of R.C. 2151.414, that it is in the best interest of the child and any of the following apply:

(a) The child is not abandoned or orphaned* * *and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period* *

* * * *

{¶ 20} R.C. 2151.414(B) therefore provides a two-pronged analysis the trial court is required to apply when ruling on a motion for permanent custody. In practice, the trial court will determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1) (a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶ 21} R.C. 2151.414(D) governs "best interests" and states the following:

(D) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or

more months of a consecutive twenty-two-month period ending on or after March 18, 1999;

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

(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 22} Clear and convincing evidence is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. See also, *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 481 N.E.2d 361 (1985). "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross* at 477.

Father's Arguments

{¶ 23} The trial court's April 12, 2023 judgment found L.C. could not be placed with father within a reasonable time and that father had abandoned L.C. On appeal, father challenges only the trial court's finding that he abandoned L.C.

{¶ 24} R.C. 2151.011(C) states "a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days."

{¶ 25} Father does not deny he failed to visit L.C. for more than 90 days, but he blames SCJFS for his failure to visit. According to the record, however, once paternity was established and father became aware of L.C., he visited with her just once during the pendency of this matter -- on April 2022 following the adjudicatory hearing. Transcript of trial (T.) 10. Father suggests SCJFS should have provided funding for airfare for him to come to Ohio to visit L.C. or should have brought L.C. to Florida for visitation. Father provides no authority, however, to support a conclusion that a public children's services agency is required to fund interstate travel.

{¶ 26} Father further blames SCJFS for his lack of communication and for failing to set up Facetime visits with L.C. But Craig testified it was challenging to communicate with father on the telephone as he is difficult to understand and was always crying. T. 21. While she had more success communicating with father via email, his communication remained sporadic. Craig would send an email and father would take a couple weeks to respond. T. 10. As for Facetime visits with L.C., there is no evidence in the record to support a conclusion that father requested facetime visits. Rather, Craig testified that at one point she told father she would try to arrange a Facetime visit. T. 17. However, Craig also testified that due to L.C.'s age, behavior, and lack of speech, Facetime visits were not practical. T.11. Father did request photos of L.C. and Craig provided the same. T.11. A visit was scheduled for father for the day of the permanent custody hearing, but father failed to show. T. 11. He had known about the permanent custody hearing for two months. T. 4-5. What is more, father failed to comply with the ICPC. He hung up on workers when they called and refused to permit a home study. T. 14. Father also never contacted the assigned Guardian ad Litem. Guardian's final report, docket item 62.

{¶ 27} Father further faults SCJFS for failing to establish a case plan to assist with reunification and points out that the trial court found SCJFS failed to make reasonable efforts and case planning to assist Father with reunification. Findings of Fact and Conclusions of Law, April 12, 2023 at 6. However, no reasonable efforts finding is required when a parent has abandoned a child. *In re Stafford*, 5th Dist. No. 2006 CA 00307, 2007-Ohio-928 ¶ 17 citing *In re Starkey*, 150 Ohio App.3d 612, 617, 2002-Ohio-6892 782 N.E.2d 665 ¶ 15 and *In re G.B.*, Summit App.No. 22628, 2005-Ohio-4540, ¶ 4. The trial court found father abandoned L.C. by failing to visit or maintain contact with L.C. for more than 90 days and had "demonstrated a lack of commitment toward the child by failing to regularly support, visit or communicate with the child when able to do so." *Id.* The trial court's best efforts finding is therefore extraneous. We note that Father could have facilitated the formulation of a case plan and possibly avoided a finding of abandonment by cooperating with the ICPC, but he failed to do so.

{¶ 28} Moreover, the trial court did not err in finding granting SCJFS's motion for permanent custody was in L.C.'s best interest. Testimony established that L.C. in thriving for the first time in her life in her foster placement. When L.C. was placed in the temporary custody of SCJFS she had no social skills and struggled with speech deficits due to severe parental neglect. She now receives the proper therapy and schooling to remedy these issues. T. 23-25. Kinship placements were explored and found to be inappropriate, and father failed to cooperate with the ICPC. T. 14, 26-27. L.C.'s current foster parents are open to the idea of adopting L.C. T. 29. We therefore find no err in the trial court's best interests findings.

Conclusion

{¶ 29} So long as the trial court's finding of abandonment was supported by the evidence, father cannot establish reversible error based on a lack of reasonable case planning efforts. Upon examination of the entire record, we find the undisputed facts establish that father abandoned L.C., that the necessity for permanent custody was established by clear and convincing evidence, and such findings were not against the manifest weight of the evidence.

{¶ 30} The sole assignment of error is overruled.

{¶ 31} The judgment of the Stark County Court of Common Pleas, Juvenile Division, is affirmed.

By King, J.,
Delaney, P.J. and
Baldwin, J. concur.