

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: J. C., C. S.,
K. H., I. H., E. H., and J. H.

Court of Appeals No. L-09-1052

Trial Court No. JC 08-185565

DECISION AND JUDGMENT

Decided: June 30, 2009

* * * * *

Mary C. Clark, for appellants.

Angela Y. Russell, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellants J. H. and D. H., and awarded permanent custody of their children to Lucas County Children Services ("LCCS"). For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellants set forth a single assignment of error:

{¶ 3} "The trial court's finding that permanent custody should be awarded to Lucas County Children Services is based on an improper statutory analysis under O.R.C. § 211.414(D) & (E)."

{¶ 4} Lucas County Children Services has been involved with this family since approximately 1992. The current case, however, was not filed until April 2003, when four of appellants' children were removed from the home due to concerns regarding poor housing conditions, substance abuse and domestic violence. A fifth child was removed at birth in December 2003. A sixth child, J. C., living with appellants has no known legal father and his mother is deceased. He was 12 years old in 2003, and was not removed from the home until later. It appears that J. C. is involved in this case because he lived with mother, who at some point had become his legal custodian. Eventually, J. C. was placed in the custody of the other children's paternal grandmother.

{¶ 5} The children were returned to the home in 2004, but the reunification lasted only two months; the children were removed again in August 2004. They remained in foster care until March 2007, when they were again returned to their mother. They were removed once again in July 2007, due to domestic violence between mother and her current boyfriend, A. W. Following that removal, temporary custody was given to paternal grandmother, D. H.; grandmother received legal custody in November 2007. When grandmother was charged with assault following an incident where she "swatted" J. C. with a kitchen knife and injured him, all of the children were removed from

grandmother's home and placed in foster care. On August 18, 2008, with concerns remaining regarding mother's ability to parent her children and grandmother's conviction on one count of simple assault following the incident with J. C., the agency requested and received an ex parte order to take all six children into shelter care custody. At that time, the agency filed a complaint in dependency, neglect and abuse and request for permanent custody. As to J. C., the agency requested placement in a "planned permanent living arrangement."

{¶ 6} At this time, the children had been in appellant's care for only four and a half months out of the past five years. Appellant D. H., the legal father of all of the children except J. C., was married to mother and lived with her at the time of the 2003 removal. However, in 2004, D. H. was convicted of two counts of gross sexual imposition and two counts of rape, sentenced to 13 years incarceration and classified as an aggravated sexually oriented offender. The victim was D. H.'s stepdaughter, a sibling of the children involved in this case.

{¶ 7} In the August 2008 complaint, the agency alleged that mother continued to reside with A. W., the same boyfriend whose actions had contributed to the July 2007 removal; the children disclosed that domestic violence continued to occur between mother and A. W.; A. W. had charges pending against him for trafficking in marijuana, fleeing the police and child endangerment, and a conviction for robbery; on one occasion, A. W. prevented a caseworker from conducting a complete home inspection and mother was unable to intervene; the children have behavioral problems that include post-traumatic

stress disorder and reactive attachment disorder but were not involved in any counseling services or provided any medications at the time the agency received custody in August 2008, and recent visitations had been chaotic with numerous behavioral issues arising which included assaultive behavior.

{¶ 8} The matter proceeded to adjudication on November 7, 2008. At that time, the trial court found C. S., K. H., I. H., E. H. and J. H. to be dependent children. J. C., then 17 years old, was found to be an abused child. On November 12 and 13, 2008, a dispositional hearing was held. By judgment entry filed February 2, 2009, the trial court awarded LCCS permanent custody of all of the children with the exception of J. C. Disposition as to J. C. was continued for further hearing.

{¶ 9} In support of their sole assignment of error, appellants assert that the trial court's findings were not supported by clear and convincing evidence.

{¶ 10} In granting a motion for permanent custody, the trial court must find that one or more of the conditions listed in R.C. 2151.414(E) exist as to each of the child's parents. If, after considering all relevant evidence, the court determines by clear and convincing evidence that one or more of the conditions exists, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1). Further, pursuant to R.C. 2151.414(D), a juvenile court must consider the best interest of the child by examining factors relevant to the case including, but not limited to, those set forth in paragraphs

(1)-(5) of subsection (D). Only if these findings are supported by clear and convincing evidence can a juvenile court terminate the rights of a natural parent and award permanent custody of a child to a children services agency. *In re William S.* (1996), 75 Ohio St.3d 95. 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* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶ 11} As to disposition, the record reflects that the trial court heard testimony from mother, grandmother, two LCCS caseworkers, two of the children's therapists, a visitation manager for the agency and the children's guardian ad litem.

{¶ 12} Mother testified as to her relationship with A. W. She admitted knowing of A. W.'s past substance abuse issues, his criminal history which included child endangering, and the agency's concern about A. W. remaining in her home. Mother testified that she ended the relationship with A. W. two weeks before the permanent custody hearing. She admitted that she had not been honest with agency caseworkers regarding the continuing relationship and testified she had told her children to lie to caseworkers about A. W. living in her home. In contrast, she also testified that she had introduced A. W. to her children as "Bob" so that the agency would not know she was living with him. Mother testified she had remained in the relationship due to her need for companionship and unwillingness to be alone and said she did not think A. W. posed a threat to her children. She admitted that the children had been in her care for less than five months over a five-year period and acknowledged that her home was not suitable for

the children at the time of the hearing. Mother testified that the issues originally causing the children to be removed were housing, domestic violence between herself and their father D. H. and, later, between herself and A. W. She further testified that she is aware of her children's special needs. Mother stated that she believes the children's current foster mother has bonded with the children, takes good care of them, and can keep them safe.

{¶ 13} Ernestine Wierick and Jennifer Beck, both therapists with Connecting Point, testified as to their contact with the children. Wierick testified that each of the children had been diagnosed with either post-traumatic stress disorder, attention deficit hyperactivity disorder, oppositional defiant disorder and reactive attachment disorder; some of the children were diagnosed with more than one of those disorders. The children have been prescribed psychotropic medications at various times; some were currently on medication and some were not. She testified that after the agency closed its case in June 2008, and prior to filing the pending complaint, grandmother no longer followed through with the necessary counseling. Wierick also stated that the children need a caregiver who will follow through with treatment and medication.

{¶ 14} Beck testified that she was the children's counselor during 2007. Shortly after she began working with the children, grandmother again took custody. Several therapy appointments were missed. She further testified that grandmother lacked control over the children during and immediately after the counseling sessions. She stated that

grandmother told her she would not be bringing the children to counseling once the agency was no longer involved because she did not think it was necessary.

{¶ 15} LCCS caseworker Daniel Klepacz testified that he was assigned to this case in April 2003. He stated that at that time, the agency had concerns regarding the unclean and unsafe condition of the home and domestic violence between mother and D. H., who were still married at that time. Klepacz testified as to case plan services offered the parents. He stated that D. H. did not want to comply and failed to complete the substance abuse treatment and domestic violence classes included in his plan. He further testified that mother was compliant and completed all of her services. After another series of removals and reunifications, Klepacz recommended permanent custody in 2007, because he did not believe mother had benefited from any of her services and continued to display poor judgment.

{¶ 16} Rebecca Miller, the family's current caseworker, testified regarding her involvement with the family since July 2007. Miller stated that mother has a history of choosing "inappropriate men," including two men who are sexual offenders and domestically violent. She expressed concern regarding a home visit during which mother's boyfriend A. W. was aggressive and verbally abusive toward her and refused to allow her to complete the evaluation. Miller noted that mother struggles to control the children and makes relationship decisions that do not allow the children to be safe. She further testified that the children disclosed to her incidents of domestic violence when A. W. was in the home.

{¶ 17} Miller further testified that when grandmother gained legal custody of the younger children in 2007, she represented to the agency that 17-year-old J. C., who had been adjudicated a sexual offender, was no longer in her custody. The agency subsequently learned that J. C. was living in grandmother's home with the other children. Miller stated that grandmother was unwilling to take appropriate measures to provide for the safety of the younger children with J. C. in the home. The agency obtained a Section 8 voucher for grandmother so that she could move with the children to a larger home but the move had not occurred as of June 2008. Miller testified that four of the children were currently together in a foster home. E. H., however, was in a different foster home because of severe behavioral problems and mental health needs which the other foster mother could not handle. Miller stated that she does not find mother to be forthcoming or honest and does not believe mother has ended her relationship with A. W. She further does not believe that mother can keep her children safe, even after five years involvement with the agency. Miller also believes that an order of permanent custody to the agency is in the children's best interest.

{¶ 18} This court has thoroughly reviewed the record of proceedings in this case, beginning with mother's and father's initial involvement with the agency in 2003, through the hearing on the motion for permanent custody and the trial court's decision. Contrary to appellants' claim that the trial court simply made a "sweeping decision that R.C. 21151.414(E) was satisfied," we find that the judgment entry in this case addresses all of

the relevant statutory factors in detail. Further, the trial court set forth how each relevant factor applied to mother, father and grandmother.

{¶ 19} Pursuant to R.C. 2151.414(E)(1), the trial court found that the family had frequent encounters with LCCS since 1992, and that both parents had failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the home. The trial court noted that at the time of the hearing, mother had outstanding issues regarding housing and continued to exhibit poor judgment with regard to parenting and her relationships with men.

{¶ 20} As to father, the trial court noted, pursuant to R.C. 2151.414(E)(5), (7) and (12), that he was currently incarcerated for an offense committed against a sibling of the children involved in this case and that he would not be available to care for the children for at least 18 months after the dispositional hearing.

{¶ 21} As to grandmother, the trial court found that she had been convicted of simple assault pursuant to R.C. 2903.13 and that the victim of the offense was another child (J. C.) who lived in her household. The trial court further found that grandmother, pursuant to R.C. 2151.414(E)(14), was unwilling to prevent the children from suffering physical, emotional or sexual abuse.

{¶ 22} The trial court found, pursuant to R.C. 2151.414(D), that the continued residence of the children in the home of either parent or their grandmother, then the legal custodian, was contrary to the children's best interest. The trial court noted that the

children, who have been removed from their home repeatedly since 2003, need a legally secure permanent placement.

{¶ 23} The trial court also noted that the children's guardian ad litem recommended that LCCS be awarded permanent custody of the children.

{¶ 24} Based on our review of the record as summarized above, we find that the trial court's decision was supported by clear and convincing evidence that an award of permanent custody to the Lucas County Children Services was in the best interest of C.S., K. H., I. H., E. H., and J. H. Accordingly, appellants' sole assignment of error is not well-taken.

{¶ 25} On consideration whereof, this court finds that substantial justice has been done the parties complaining and the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

In the Matter of: J. C.
C.A. No. L-09-1052

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

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