

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

IN THE MATTER OF: A.R., DEPENDENT CHILD

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0019

Civil Appeal from the
Court of Common Pleas, Juvenile Division of Mahoning County, Ohio
Case No. 2019 JC 00139

BEFORE:

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed.

Atty. Lori Shells Simmons, Mahoning County Children Services, 222 West Federal Street,
4th Floor, Youngstown, Ohio 44503, for Appellee and

Atty. Rhys B. Cartwright-Jones, 42 North Phelps Street, Youngstown, Ohio 44503, for
Appellant.

Dated:
September 14, 2022

Donofrio, P. J.

{¶1} Appellant, D. H. (father), appeals from a Mahoning County Common Pleas Court Juvenile Division judgment terminating his parental rights as to his daughter.

{¶2} The minor child in this case was born on October 11, 2018. She lived with mother until she was three-and-a-half months old. At that time, on January 29, 2019, mother executed a Voluntary Agreement of Care, which placed the child in the temporary custody of Appellee, Mahoning County Children Services Board (the agency). The agency motioned the trial court to adjudicate the child dependent based on allegations that mother was not feeding the child sufficient amounts of formula and mother's mental health was impairing her ability to effectively parent the child. After a March 19, 2019 hearing, the trial court granted the agency's motion, adjudicated the child dependent, and awarded the agency temporary custody. The agency put a case plan in place for mother with the goal of reunification.

{¶3} Paternity was established and a support order was put in place for father on October 17, 2019. When mother learned that father's paternity had been established, she communicated with him while he was in prison. Father was serving a prison term on a parole violation stemming from a robbery conviction. Father was released from prison in June 2020. After his release, father was granted supervised visitation with the child once a week. He resided in Allegheny, Pennsylvania. He sought to be considered for placement of the child. Because father resided outside of Ohio, the agency submitted an application for the Interstate Compact for Placement of Children (ICPC). It also submitted an application for ICPC for the paternal grandmother for possible placement.

{¶4} The agency filed a motion to modify temporary custody to permanent custody on December 8, 2020. At that time, the child had been in the agency's temporary custody for 19 months. The motion asserted that, despite her case plan, mother still did not demonstrate appropriate parenting knowledge or decision making skills to serve the child's best interest. It further asserted that father had been in prison for most of the child's life and the time frame for it to maintain temporary custody was nearing expiration. The motion also listed father's extensive criminal history.

{¶5} Mother voluntarily surrendered her parental rights on June 10, 2021. The trial court then dismissed mother from the case.

{¶6} The case continued to a hearing before a magistrate on September 9, 2021, on the agency's motion for permanent custody. The magistrate heard testimony from the child's caseworker, father, and the child's guardian ad litem (GAL). The magistrate then concluded the child was in need of a legally secure placement due to her being in the agency's temporary custody for an extended period of time and that the only way to achieve this was by granting permanent custody to the agency. The magistrate found the agency had no ability to place the child with father in another state absent approval from the ICPC, which denied father twice. The magistrate pointed to father's extensive criminal history and the fact he is a registered sex offender in Pennsylvania and New York. The magistrate then sustained the agency's motion for permanent custody and terminated father's parental rights.

{¶7} Father filed objections to the magistrate's decision. He claimed the magistrate should not have relied so heavily on his criminal history, the agency did not exercise reasonable efforts for reunification, and the ICPC provided conflicting evidence about placement of the child with him.

{¶8} The trial court held a hearing on father's objections on January 19, 2022. In its January 31, 2022 judgment entry, the court overruled father's objections, terminated father's parental rights, and granted permanent custody of the child to the agency.

{¶9} Father filed a timely notice of appeal on February 18, 2022. He now raises a single assignment of error.

{¶10} Father's sole assignment of error states:

THE TRIAL COURT ERRED IN TERMINATING FATHER'S
PARENTAL RIGHTS INSOFAR AS THE ORDER WAS AGAINST THE
MANIFEST WEIGHT OF THE EVIDENCE.

{¶11} Father argues the court's judgment was against the weight of the evidence.

{¶12} First, he notes that the court focused largely on his criminal history. He argues that his criminal convictions all pre-date the child's birth. Additionally, he asserts that any pending charges cannot be held against him because he enjoys a presumption

of innocence on those charges. And he notes he has never committed an offense against the child.

{¶13} Next, father argues that the agency did not meet its burden of proving it made reasonable efforts to reunite the child with him. He notes that the first ICPC investigation, conducted in Allegheny County, Pennsylvania, disapproved placement with him due to his criminal history. A second ICPC investigation, conducted in Lawrence County, Pennsylvania, approved placement with him. But a third ICPC investigation, conducted again by Lawrence County, disapproved placement with him. He argues the agency then made no further efforts to reunite him with the child or formulate a case plan that would allow him to remain a part of her life.

{¶14} A parent's right to raise his or her children is an essential and basic civil right. *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45, 54." *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). However, this right is not absolute. *In re Sims*, 7th Dist. Jefferson No. 02-JE-2, 2002-Ohio-3458, ¶ 23. In order to protect a child's welfare, the state may terminate parents' rights as a last resort. *Id.*

{¶15} We review a trial court's decision terminating parental rights and responsibilities for an abuse of discretion. *Sims*, 7th Dist. Jefferson No. 02-JE-2, ¶ 36. Abuse of discretion connotes more than an error of judgment; it implies that the court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶16} Pursuant to R.C. 2151.414(B)(1):

[T]he court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, has not 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 * * * 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, * * *.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶17} Thus, in order to grant permanent custody to the agency, the trial court must make one of the five findings set out in R.C. 2151.414(B)(1)(a) through (e) and make a best interest finding.

{¶18} In considering the child's best interest, the trial court shall consider all relevant factors, including, but not limited to:

(a) 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;

(b) 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;

(c) 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(d) 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;

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

R.C. 2151.414(D)(1).

{¶19} In this case, the trial court found that the child has been in the custody of the agency for at least 12 months of a consecutive 22-month period. The court also found that it is in the child's best interest to be placed in the agency's permanent custody. Thus, the court made the required findings. The court additionally stated it considered the statutory best interest factors and made findings going to those factors. It found that the child has been in her current foster home since her removal and is thriving in her foster parents' care. It found the child has had some difficulties during visitation with father, likely due to not meeting him until she was almost two years old and her feeling confined in the visitation room. The court found that the child is too young to express a custody preference. It noted that she has been in the agency's temporary custody since January 29, 2019. Given the length of time she has been in temporary custody, the court found the child is in need of a legally secure placement. And it found that a placement that provides stability and permanency cannot be achieved without a grant of permanent custody to the agency. Finally, the court found that the factors in R.C. 2151.414(E)(7) to (11) did not apply to either parent.

{¶20} Next, we must move on to examine whether clear and convincing evidence supports the trial court's findings.

{¶21} Samantha Thomas is the child's caseworker. Thomas stated that the child came into the agency's care in January 2019, when mother signed a Voluntary Agreement of Care. (Tr. 20). The child has been in the agency's custody since that time. (Tr. 21).

{¶22} Thomas stated that when the agency assumed custody, she began to communicate with father via letters and telephone. (Tr. 21, 23). At that time, father was in prison on a parole violation from an underlying robbery conviction. (Tr. 22). She stated that father received some of her letters and others were returned to her. (Tr. 23). Father was released in June 2020, and went to live with his ex-fiancée in Allegheny County, Pennsylvania. (Tr. 22, 24).

{¶23} Thomas testified that father indicated he wished to be considered for placement. (Tr. 25). She then submitted an ICPC for him in Allegheny County and also submitted an ICPC for the paternal grandmother. (Tr. 25). Both of those ICPCs were denied. (Tr. 25). Father's ICPC was denied due to concerns regarding his criminal history, his mental health, his relationship with his ex-fiancée, his housing, and his lack of any history of caring for children. (Tr. 26). Thomas stated that father was incarcerated from 2007 to 2014. (Tr. 26). In 2016, he was mandated into drug and alcohol treatment. (Tr. 26). He was then incarcerated again from 2018 to 2020. (Tr. 26). Most concerning was that father is a registered sex offender. (Tr. 27). Thomas further stated that father had been indicted on a failure to register charge, which was currently pending. (Tr. 29-30). Thomas stated that when she asked father about his prior sex offense he became defensive and said he was set up. (Tr. 30). She testified that father also has charges pending regarding guns and drugs found during a traffic stop. (Tr. 42). She testified that after his ICPC was denied in Allegheny County, father moved to Lawrence County, Pennsylvania and requested that she submit a new ICPC with his new housing. (Tr. 31). Thomas did so and initially Lawrence County approved the ICPC. (Tr. 31). However, several months later, Lawrence County rescinded its approval. (Tr. 31).

{¶24} Thomas testified that father also provided her with names of his sisters, his mother, and an aunt for possible placement of the child. (Tr. 35). But each of these

were denied. (Tr. 35-36). As to the paternal grandmother, the ICPC was denied due to her extensive criminal history. (Tr. 37). Father's aunt was approved; however, she rescinded her willingness to take the child. (Tr. 37). As to father's sisters, they were both denied because they did not respond to the county's efforts to communicate with them. (Tr. 39). Thomas stated she could not add father into the case plan because he resided in Pennsylvania. (Tr. 39, 44).

{¶25} Given all of the above, Thomas recommended that the court grant permanent custody of the child to the agency. (Tr. 45).

{¶26} Thomas also testified regarding father's visits with the child. She stated that father has weekly, one-hour supervised visits. (Tr. 47, 49). Thomas indicated that father is often on his cell phone during visits. (Tr. 47). Additionally, the visitation worker has to change the child's diaper during visits because father has stated that he is uncomfortable doing so. (Tr. 47). Moreover, father has been late to and canceled several visits. (Tr. 47). Specifically, he canceled eight visits in approximately one year's time. (Tr. 56). Thomas stated father has had transportation issues and missed two visits due to deaths in his family. (Tr. 56).

{¶27} Father testified next. He stated that after paternity was established, he began having Zoom visits with the child while he was incarcerated. (Tr. 66). He was released from prison in June 2020, and moved in with his ex-fiancée in Clairton, Pennsylvania, which is about an hour and a half from where the child was residing in Youngstown, Ohio. (Tr. 67-68). He then started weekly, supervised visits with the child. (Tr. 68). During the visits, he talks with her and tries to help her with her speech. (Tr. 77-78). Father said he has noticed in their last few visits that she knows who he is. (Tr. 78).

{¶28} Father stated that he currently has charges pending in Mercer County, Pennsylvania. (Tr. 72). He stated that he was giving someone a ride when he got pulled over and his passenger stashed "stuff" under his seat. (Tr. 72). He also acknowledged that he had charges pending in Mahoning County, Ohio stemming from failing to register. (Tr. 75). But he claimed he had permission by the police to stay in Ohio. (Tr. 74). Father stated that he has a lifetime registration requirement stemming from something "subjective" that happened in New York and another offense in Pennsylvania. (Tr. 80).

He stated that he was charged with sexual misconduct, serving alcohol to minors, and kissing an underage girl. (Tr. 80).

{¶29} Father testified that he wished to have some type of relationship with the child and to continue to be a part of her life. (Tr. 75).

{¶30} Nancy Carson, the GAL, was the final witness. Carson recommended that the court grant permanent custody to the agency with the power of adoption. (Tr. 103). She testified that the child had been in the same foster home since she was three months old and she was now almost three years old. (Tr. 92). She opined it would be a great disservice to the child to remove her from the only home she has known all of her life and place her somewhere else. (Tr. 92-93). Carson stated that the child is well-cared for, is thriving, and has all of her needs met. (Tr. 93). The child is also bonded to the other children in her foster home. (Tr. 95). She further testified that the child's foster parents are very loving and are interested in adopting her. (Tr. 93).

{¶31} As to the child's visits with father, Carson stated that the child does recognize him. (Tr. 94). But she does not feel that the two have developed a bond. (Tr. 93-94). Carson also testified that during their visits, father would ask her to change the child's diapers. (Tr. 95).

{¶32} Carson additionally testified she was very concerned that father is a registered sex offender. (Tr. 98-99). She stated that most of her conversations with the father were about his problems with his mental health issues. (Tr. 100). Carson was also concerned that father has been out of prison for over a year and still does not have a job. (Tr. 101). She opined that he does not take any responsibility for anything that has happened. (Tr. 101). She was also concerned that father moved four times in one year and that he does not have reliable transportation. (Tr. 101).

{¶33} Based on the testimony, clear and convincing evidence supports the trial court's judgment.

{¶34} As the court pointed out, it was uncontroverted that the child has been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. The child entered the agency's temporary custody on January 29, 2019. She has remained in the agency's custody since that day. Thus, she has clearly been in the

agency's temporary custody for 12 or more months of a consecutive 22-month period. As such, R.C. 2151.414(B)(1)(d) applies.

{¶35} Moreover, the statutory best interest factors indicate that permanent custody to the agency is in the child's best interest.

{¶36} According to the child's GAL, she has been with the same foster family since January 2019. She is well cared for and well bonded to her foster parents and siblings. As to father, the GAL testified that while the child does recognize father, there does not seem to be a bond between them. (R.C. 2151.414(D)(1)(a)).

{¶37} Because the child was not even three years old at the time of the hearing, the court found she was too young for it to consider her wishes as to custody. (R.C. 2151.414(D)(1)(b)).

{¶38} As to the child's custodial history, she was in mother's care until she was three-and-a-half months old. At that time, mother signed a Voluntary Agreement of Care, placing the child in the agency's temporary custody. The agency then placed the child in the foster home in which she still currently resides. (R.C. 2151.414(D)(1)(c)).

{¶39} As to the child's need for a legally secure permanent placement, the caseworker testified that the agency submitted an ICPC for father when he indicated he wished to be considered for placement. The first ICPC was denied. The second ICPC was initially granted but ultimately denied. The caseworker also looked into father's sisters, his mother, and an aunt for possible placement of the child. The aunt was approved for placement. But she was not willing to take the child. The paternal grandmother and father's sisters were all denied. Additionally, the GAL testified that the child's foster parents are interested in adopting her. (R.C. 2151.414(D)(1)(d)).

{¶40} Finally, none of the factors in R.C. 2151.414(E)(7) to (11) apply in this case. Those factors have to do with certain crimes involving children, the parent placing the child in a substantial risk of harm, the parent abandoning the child, and the parent having their parental rights involuntarily terminated as to another child. (R.C. 2151.414(D)(1)(e)).

{¶41} In addition to the factors set out in the statute, there was also a significant amount of testimony regarding father's criminal history. At the time of the child's birth, father was serving a prison term on a parole violation resulting from an underlying robbery

conviction. Father had also served a prison term from 2007 to 2014. Most concerning is the fact that father is a registered sex offender with a lifetime reporting requirement. At the time of the hearing, father had a failure to register charge pending in Ohio. He also had charges pending in Pennsylvania stemming from a traffic stop where drugs and guns were found in his car.

{¶42} Appellant claims the court put too much weight on his criminal history, noting that all of his convictions pre-dated the child's birth. While it is true that his convictions pre-date the child's birth, the court could not ignore the fact that father is a sexual offender with a lifetime reporting requirement. And although they are only charges pending, as opposed to convictions, the fact that father had multiple charges pending in two different states was also a factor for the court to take into consideration.

{¶43} Appellant also alleges the agency did not make reasonable efforts to reunite the child with him. The evidence does not support this allegation. The caseworker testified that when the agency assumed custody of the child, she began to communicate with father, who was in prison, via letters and telephone. When father was released from prison, the agency set up weekly visits for him with the child. When father indicated that he wished to be considered for placement, the caseworker submitted an ICPC for him in Allegheny County. She also submitted an ICPC for his mother. Both of those ICPCs were denied. After his ICPC was denied in Allegheny County, father moved to Lawrence County, Pennsylvania and requested that the caseworker submit a new ICPC with his new housing arrangement. She did so and initially Lawrence County approved the ICPC. But a few months later, Lawrence County rescinded its approval. Additionally, father provided the caseworker with the names of his sisters and his aunt for possible placement of the child. The aunt was approved for placement; however, she later changed her mind about taking the child in. Father's sisters did not respond to the agency's efforts to communicate with them. Additionally, the caseworker could not add father into the case plan because he did not reside in Ohio. Thus, the agency explored several different avenues in trying to create a bond between father and the child and in trying to have the child placed with father or one of his family members. Despite these efforts, the child could not be reunited with father.

{¶44} In sum, clear and convincing evidence supports the trial court’s judgment granting permanent custody to the agency. Thus, we conclude the trial court did not abuse its discretion. The child has been with the same foster family for most of her life. She is bonded with them. The child cannot be placed with father or any of his relatives. The child will only have a legally secure placement if the agency has permanent custody.

{¶45} Accordingly, father’s sole assignment of error is without merit and is overruled.

{¶46} For the reasons stated above, the trial court’s judgment is hereby affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division of Mahoning County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.