

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO

IN THE MATTER OF:	:	OPINION
	:	
T. F.	:	CASE NO. 2009-A-0039
	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Juvenile Division, Case No. 08 JC 8.

Judgment: Affirmed.

Anita B. Staley, Barthol & Staley, L.P.A., 7327 Center Street, Mentor, OH 44060 (For Appellant-Christina Paulus).

Laura M. DiGiacomo, 3914 Court, P.O. Box 1175, Ashtabula, OH 44005 (For Appellee-Ashtabula County Children Services Board).

Jodi M. Blankenship, 302 South Broadway, Geneva, OH 44041 (Guardian ad litem).

DIANE V. GRENDELL, J.

{¶1} Appellant, Christina Paulus, appeals the Judgment of the Ashtabula County Court of Common Pleas, Juvenile Division, granting appellee, Ashtabula County Children’s Services Board’s, Motion Requesting Modification of Temporary Custody to Permanent Custody of Paulus’ minor child, T.F. For the following reasons, we affirm the decision of the court below.

{¶2} Paulus is the biological mother of four children, A.S., L’T.F., L.F., and T.F. Laslo Fleming, Sr. is the biological father of L’T.F., L.F., and T.F. Ashtabula Children’s

Services have been involved with Paulus' children since the Fall of 2006. A.S. was placed in the legal custody of his paternal grandmother. L'T.F. was placed in the legal custody of her paternal grandparents. The case plan developed for Paulus and Fleming entailed drug and alcohol assessments, the maintenance of stable housing and regular income, parenting classes, and a psychological evaluation. Lori Merkel was the case worker assigned to Paulus' case.

{¶3} L.F. was born on December 28, 2006.

{¶4} On February 23, 2007, Children's Services acquired temporary custody of L.F. He was placed with a foster family, the Myers.

{¶5} In November 2007, Fleming was convicted of possession of crack cocaine and ordered to attend drug treatment at NEOCAP, a residential drug and alcohol treatment center.

{¶6} T.F. was born prematurely, at 30 weeks gestation, on January 2, 2008, at Metro Hospital in Cleveland. T.F. was released from the hospital into Paulus' custody in February 2008. At this time, Paulus was living with her grandmother, i.e. T.F.'s maternal great-grandmother, Betty Ghiz, in Jefferson, Ohio.

{¶7} On February 14, 2008, Ashtabula Children's Services filed a Complaint for Protective Supervision of T.F., based on allegations of dependency as defined in R.C. 2151.04(C) and (D).¹

{¶8} On February 26, 2008, a Magistrate's Decision was issued, finding T.F. dependent and granting Ashtabula Children's Services protective supervision. On this

1. I.e. that T.F.'s "condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship"; that T.F. "is residing in a household in which a parent *** committed an act that was the basis for an adjudication that a sibling of the child *** is an abused, neglected, or dependent child"; and that "[b]ecause of the circumstances surrounding the abuse, neglect, or dependency of the sibling *** and the other conditions in the household of the child, [T.F.] is in danger of being abused or neglected by that parent." R.C. 2151.04(C) and (D).

date, a revised Case Plan was filed to include recommendations for T.F. and Attorney Jodi Blankenship was appointed guardian ad litem for T.F. as she had previously been appointed for L.F.

{¶9} On May 21, 2008, a Magistrate's Decision was issued granting Ashtabula Children's Services ex parte emergency temporary custody, based on a finding of probable cause to believe that T.F. "is suffering from illness or injury and is not receiving proper care, and [her] removal is necessary to prevent immediate or threatened physical or emotional harm."

{¶10} During the night of May 8 (a Thursday), 2008, Paulus disappeared from Ghiz' residence without explanation and without providing for T.F.'s well-being. Paulus returned twice over the weekend. On one occasion, she ransacked her room looking for pills and/or money. On the other occasion, she became physical with Ghiz after demanding money. At the permanent custody hearing, Merkel testified that Ghiz was afraid that if Paulus returned again and became violent, she would not be able to protect T.F. Ghiz denied saying this to Merkel. Ghiz did testify that she locked herself in her bedroom with T.F. and climbed out a window to escape from Paulus, leaving T.F. alone in the locked room.

{¶11} On May 22, 2008, a Magistrate's Decision was issued granting Children Services temporary custody of T.F. At this time, a permanent custody hearing was held with respect to L.F., T.F.'s brother.

{¶12} In June 2008, Fleming was released from NEOCAP.

{¶13} On July 21, 2008, a Magistrate's Decision was issued following an evidentiary hearing, affirming the grant of temporary custody.

{¶14} On August 26, 2008, Paulus was arrested and jailed for attempted drug abuse and possession of diazepam and Vicodin.

{¶15} In September 2008, Fleming was incarcerated for violating probation and for an additional possession charge. He had tested positive for cocaine after drug screens in July and August.

{¶16} On October 29, 2008, Paulus entered Turning Point, a residential drug and alcohol treatment facility.

{¶17} On November 14, 2008, Ashtabula Children's Services filed its Motion Requesting Modification of Temporary Custody to Permanent Custody, with respect to T.F.

{¶18} On December 2, 2008, Attorney Blankenship filed a Motion to Suspend Mother's Visitation, which was granted by Magistrate's Order on December 5, 2008.

{¶19} On December 23, 2008, Attorney Blankenship filed her Guardian ad Litem Report.

{¶20} In February 2009, Paulus was released from Turning Point and took residence at Everlasting Life, a "three-quarter house."

{¶21} Hearings on Ashtabula Children's Services' Motion were held on December 23, 2008, March 23 and March 24, 2009. In addition to the above information, the following testimony was given at the hearings.

{¶22} Merkel, Paulus' caseworker, testified that, prior to the birth of T.F., she underwent a psychological evaluation at the Bair Foundation. Paulus has also been diagnosed by various agencies as having polysubstance and opiate dependency. As recommended by the Bair Foundation, Paulus entered the Stepstone program at the Lake Area Recovery Center. The Lake Area Recovery Center recommended

detoxification for Paulus, but such services were not available and Paulus was unable to undergo detoxification during her pregnancy. Paulus ceased treatment and began using drugs again around July and continued until December 2007. At this time, Paulus began methadone treatments with Meridian Services in Youngstown, Ohio.

{¶23} From December 2007 to May 2008, i.e. while she was residing with Ghiz, Paulus was meeting T.F.'s basic needs. In May 2008, Paulus tested positive for cocaine, marijuana, and benzodiazepines. Between May and August 2008, when she was arrested, Paulus had no stable residence.

{¶24} Merkel testified that out of 13 scheduled visitations with T.F. between May and July 2008, Paulus only attended seven times. The final visit occurred on July 31, 2008. At this time, Merkel noted that T.F. was bonded with Paulus. Between July 31 and October 30, 2008, Paulus made no effort or attempt to contact T.F.

{¶25} Merkel testified that she was aware of Paulus only having been employed twice in her lifetime, once at Wendy's and once at Goodwill, and that neither employment lasted very long. Paulus had submitted an application with the Ashtabula Metropolitan Housing Authority, but that application was being held because Paulus had not provided the Authority with her fingerprints.

{¶26} Merkel testified that Ghiz could not provide long term care for T.F. Merkel spoke with Paulus' sister from Wheeling, West Virginia, who declined taking custody of T.F. in favor of her placement in her brother's adoptive home. Merkel testified that T.F. has bonded with L.F. and her foster parents.

{¶27} Angela Myers testified as T.F.'s foster mother. She testified that she had adopted T.F.'s brother, L.F., and would adopt T.F. as well if that became possible.

Myers testified regarding T.F.'s developmental delays as a result of her premature birth and corrective therapy as coordinated through Ohio's Help Me Grow program.

{¶28} Angela Smith is a women's residential counselor at the Lake Area Recovery Center and was Paulus' primary counselor during her treatment at Turning Point. Smith testified that detoxification may be medically necessary in cases of opiate dependence and that a client will not be admitted for treatment at Turning Point unless they have been screened for detoxification. Smith described Paulus' progress as steady. Although a treatment center, Paulus was still considered in custody during her residence there. Smith testified that Paulus had to undergo detoxification before she could be admitted to Turning Point. Smith further testified that parenting would be a stressor in Paulus' life and that treatment at Turning Point would not have been necessary if Paulus had completed the methadone program. Finally, Smith testified that Paulus needed to develop a support system.

{¶29} Laslo Fleming testified that he was eligible for early release in March 2009. Fleming stated he desired to reconcile with Paulus and regain custody of T.F.

{¶30} Katherine Balog supervised the visitation with T.F. at Rooms to Grow. She testified that there were ten scheduled visitations between June and September 2008, and that Paulus attended five of these, the last one being July 31, 2008.

{¶31} Ghiz testified, as noted above, regarding the incidents at her residence in May 2008 that led to T.F.'s removal by Ashtabula Children's Services. Ghiz testified that she would have been able to take care of T.F. for a few months, but could not provide long term care.

{¶32} Paula Marie Clevenger is Paulus' mother. She testified that she observed Paulus providing care for T.F. during a visit in March 2008. Clevenger testified she was willing to take custody of T.F. but did not contact Children's Services.

{¶33} Kathyne Beiswenger, of Wheeling, West Virginia, is Paulus' sister. She testified that Children's Services was supposed to provide her with a contact number for T.F.'s foster family, the Myers, but failed to do so.

{¶34} Luciana Deloach is the case manager at the Everlasting Home. She testified to Paulus' desire for help in overcoming her addiction. Children are not allowed at Everlasting Home, however, outpatient services are provided for mothers who leave to be with their children. Deloach testified that Paulus does not have a permanent sponsor approved by Everlasting Life, and that a sponsor is an important part of the support network. Deloach also recalled meeting Paulus several years earlier when she worked as an emergency room nurse and noted a significant change in Paulus' demeanor since that initial meeting. Paulus was no longer aggressive and was more humble.

{¶35} Paulus testified regarding her addiction to opiates. She testified that detoxification was necessary for her to break that addiction but that she was unable to receive such treatment until her arrest. The Stepstone program referred her to Rosary Hall in Cleveland for detoxification, but Rosary Hall would not accept out-of-county patients unless they had insurance or could otherwise pay for treatment. Paulus testified that a week of detoxification cost about four thousand dollars. Merkel referred Paulus to the Ashtabula County Medical Center for detoxification, but Children's Services could not pay for the treatment. The Medical Center ultimately referred her to Metro in Cleveland where she began methadone treatment, since her pregnancy with

T.F. precluded detoxification. Paulus continued her methadone treatments until June or July of 2008. Ultimately, Paulus underwent a prescription detoxification program while in jail without cost.

{¶36} Paulus testified that between May and August 2008, she had no residence and was staying with friends and/or at hotels. She explained that her visitation with T.F. was inconsistent because, during this time, she was “busy being high.”

{¶37} Paulus testified that she has kept in contact with Fleming through letters. She did not attempt to contact Ashtabula Children’s Services while she was in jail except to have Ghiz ask Merkel if she would lose her visitation rights.

{¶38} Paulus testified that she had worked at the El Grande Steak House for one month and, inconsistently, that she had worked there for four days. Paulus gave conflicting reasons why she left her employment at El Grande. Paulus testified that she currently, i.e. as of March 23, 2009, had employment at Flying J but had not yet started working there.

{¶39} Paulus testified that she had a sponsor since leaving the Turning Point facility. Paulus later explained that she had a temporary sponsor whom she intended to be her permanent sponsor.

{¶40} With respect to housing, Paulus testified that she had submitted applications for housing assistance with the Ashtabula Metropolitan Housing Authority and the Hope Housing Program. Paulus said she would leave Everlasting Life as soon as she had other housing. Paulus said that if she had to find a place for T.F. to live within 30 days, she would do so. Paulus does not have transportation.

{¶41} Paulus was unable to testify about the current status of her criminal charges.

{¶42} Paulus testified that she has completed three parenting classes and, since she underwent treatment at Turning Point, has included her family in her support network.

{¶43} The guardian ad litem, Attorney Blankenship, testified that she had not met with Paulus since T.F. was removed from her custody. She testified regarding T.F.'s interaction and relationship with L.F. and the Myers family. She recommended that Ashtabula Children's Services' Motion for Permanent Custody be granted based on the bond between T.F. and her brother and because of ongoing concerns about Paulus' ability to maintain stability in her life. While acknowledging Paulus' progress, she felt it would take some time for Paulus to demonstrate her ability to care for T.F. Attorney Blankenship testified that she motioned the juvenile court to terminate Paulus' visitation because of the length of time since Paulus' last visit and the possibility of Children's Services' Motion being granted. Attorney Blankenship did not want to reestablish a relationship and have it disrupted soon thereafter.

{¶44} On June 8, 2009, a Magistrate's Decision was issued granting Ashtabula Children's Services' Motion.

{¶45} On June 17, 2009, Paulus filed Objection to the Magistrate's Decision.

{¶46} On July 8, 2009, the trial court adopted the Magistrate's Decision, granting Ashtabula Children's Services' Motion and terminating Paulus and Fleming's parental rights.

{¶47} On August 5, 2009, Paulus filed her Notice of Appeal. On appeal, she raises the following assignment of error.

{¶48} “[1.] The trial court erred in granting the motion for permanent custody as such decision was against the manifest weight of the evidence and resulted in a manifest miscarriage of justice.”

{¶49} “[P]arents who are suitable persons have a ‘paramount’ right to the custody of their minor children.” *In re Murray* (1990), 52 Ohio St.3d 155, 157 (citations omitted). “The fundamental interest of parents is not absolute, however.” *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, at ¶11. The “extreme disposition” of permanently terminating a parent’s rights with respect to a child “is nevertheless expressly sanctioned *** when it is necessary for the ‘welfare’ of the child.” *In re Cunningham* (1979), 59 Ohio St.2d 100, 105. “[T]he *fundamental* or *primary* inquiry at the dispositional phase of these juvenile proceedings is not whether the parents of a previously adjudicated ‘dependent’ child are either fit or unfit,” rather, it is “the best interests and welfare of that child [that] are of paramount importance.” *Id.* at 106 (emphasis sic). “Parental interests must be subordinated to the child’s interest in determining an appropriate disposition of any petition to terminate parental rights.” *Id.*; *D.A.*, 2007-Ohio-1105, at ¶11 (“[o]nce the case reaches the disposition phase, the best interest of the child controls”).

{¶50} “If a child is adjudicated an abused, neglected, or dependent child, the court may *** [c]ommit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 [2151.41.4] of the Revised Code that the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section

2151.414 [2151.41.4] of the Revised Code that the permanent commitment is in the best interest of the child.” R.C. 2151.353(A)(4).

{¶51} A “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” if, by clear and convincing evidence, the court determines that “the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home,” or “[t]he parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child,” or “[t]he parent has abandoned the child.” R.C. 2151.414(E)(1), (4), and (10). “[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.” R.C. 2151.011(C).

{¶52} “In determining the best interest of a child ***, the court shall consider all relevant factors, including, but not limited to, *** [t]he 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; *** [t]he custodial history of the child ***; [and] [t]he 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.” R.C. 2151.414(D)(1), (3), and (4).

{¶53} When reviewing the juvenile court’s findings, this court applies the civil manifest-weight-of-the-evidence standard. *In re Lay* (1986), 25 Ohio St.3d 41, 42 (citation omitted). “Judgments supported by some competent, credible evidence going

to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *Wilson*, 2007-Ohio-2202, at ¶24, quoting *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, at syllabus. “A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.” *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81.

{¶54} Paulus raises several arguments under her sole assignment of error.

{¶55} Paulus argues the juvenile court erred in determining that she has failed to remedy the conditions causing T.F. to be placed outside of the home, in light of the facts that she has remained clean and sober since her arrest in August 2008, was not homeless, and was employed. We disagree.

{¶56} While Paulus has commendably maintained her sobriety, she has only done so in controlled environments. From August to October 2008, Paulus was in jail, where she underwent detoxification. From October 2008 to February 2009, Paulus was at Turning Point, a residential treatment facility, but still considered in custody. Similarly, her residence at Everlasting Life is dependent upon her compliance with its regulations. As Deloach testified, “[Paulus] pretty much does what we say because she knows if you don’t you can be kicked out.” While Paulus’ progress is undeniable, her sobriety has not yet been tested in an uncontrolled environment.

{¶57} Moreover, while Paulus may not be homeless, she did not have a suitable residence for T.F. at the time of the permanent custody hearing. Children are not permitted to stay at Everlasting Life and Paulus did not have other housing options at that time. Likewise, Paulus may have been technically “employed” at the time of the

hearing, but she had not yet started working and her previous employment only lasted a month or four days, depending on which testimony one is inclined to believe.

{¶58} Paulus argues the juvenile court erred by finding that Ashtabula Children's Services used reasonable case planning and diligent efforts to assist her in remedying the conditions causing T.F.'s removal. Although we find no fault in efforts made on Paulus' behalf, Children's Services was not required to make such efforts in the present case.

{¶59} Typically, a juvenile court is required to determine whether the children services agency seeking custody "has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." R.C. 2151.419(A)(1). However, such a determination is not necessary where "[t]he parent from whom the child was removed has abandoned the child." R.C. 2151.419(A)(2)(d).² Here, the court found that Paulus had abandoned T.F. by failing to have maintained contact with her for a period of over ninety days.

{¶60} Paulus next argues the juvenile court erred by finding she has demonstrated a lack of commitment toward T.F. and/or that she abandoned her. The evidence supports the court's findings on these issues. For the first four months of T.F.'s life, Paulus provided for her needs. In May 2008, she ceased providing for T.F. completely while she relapsed into drug abuse and transiency. During this period, from May until August 2008, Paulus' visitation with T.F. was sporadic and subject to the impulses of her opiate addiction. Following her final visit in July until her admission to

2. Alternatively, such a finding is not required because "[t]he parent from whom the child was removed has had parental rights involuntarily terminated *** with respect to a sibling of the child." R.C. 2151.419(A)(2)(e). In the present case, Paulus' parental rights with respect to T.F.'s brother have been involuntarily terminated.

Turning Point at the end of October, a period of over ninety days, Paulus had no contact with T.F. and made no effort to do so. We note that during this period, Paulus was able to maintain contact with Fleming and other family members. The circumstances of her addiction do not excuse her failure to maintain contact with T.F. See *In re D.P.*, 10th Dist. No. 06AP-780, 2007-Ohio-1703, at ¶9 (“mother’s claim *** that she was working on her sobriety is insufficient justification for maintaining no contact with her child”); *In re Wright*, 5th Dist. No. 2003CA00347, 2004-Ohio-1094, at ¶14 (the juvenile court did not err “in finding [the child] abandoned due to the lack of visitation during appellant’s period of incarceration”).

{¶61} Paulus argues the juvenile court erred in finding that she would not be able to parent T.F. within a reasonable time. This argument is unworkable. As noted above, Paulus’ sobriety has been limited to the period of time in which she has been in controlled environments, and at the time of hearing she did not have suitable housing for T.F. or a demonstrable income. Moreover, pursuant to R.C. 2151.414(E), the finding that Paulus abandoned T.F. for a period of ninety days constitutes a finding that she cannot be placed with her within a reasonable time.

{¶62} Paulus’ final argument is that the juvenile court erred in determining that the termination of her parental rights was in T.F.’s best interest. Again, we disagree.

{¶63} The evidence discussed so far is competent, credible evidence that, at the time of the permanent custody hearing, Paulus was unable to meet T.F.’s basic needs. That consideration, however, is not paramount in such cases as these. It is T.F.’s best interests and welfare that are of paramount importance and Paulus’ fitness as a parent is merely one factor for consideration. *Cunningham*, 59 Ohio St.2d at 106.

{¶64} T.F. is in need of legally secure permanent placement. She was removed from Paulus' custody at the age of four months. It would be six months before Ashtabula Children's Services moved for permanent custody, over half of T.F.'s life. At this time, Paulus was only beginning her road toward recovery. At the time of the permanent custody hearing, it was uncertain when Paulus might be able to provide T.F. a home. Her claim that "if it came down to that [finding a home], I would" bespeaks more of her desire than the evidence before the court.

{¶65} Finally, there was abundant credible evidence that T.F. has bonded with her brother in his adoptive home and that her needs are being met in a loving, supportive environment.

{¶66} Accordingly, the decision to grant Ashtabula Children's Services' Motion for Permanent Custody is not against the manifest weight of the evidence. The sole assignment of error is without merit.

{¶67} For the foregoing reasons, the judgment of the Ashtabula County Court of Common Pleas, Juvenile Division, terminating Paulus' parental rights and granting permanent custody of T.F. to the Ashtabula Children's Services, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.