

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

In re St.L., Sh.L.

Court of Appeals No. F-13-002

Trial Court Nos. 2042032
2082028

DECISION AND JUDGMENT

Decided: October 4, 2013

* * * * *

Clayton M. Gerbitz, for appellant R.L.

Abigail L. Wurm, for appellant D.B.

Scott A. Haselman, Fulton County Prosecuting Attorney, for appellee.

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SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Fulton County Court of Common Pleas, Juvenile Division, terminating appellants' parental rights and granting permanent custody of their minor children to appellee, Fulton County Department of Jobs

and Family Services. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant, R.L., is the biological father of St.L. and Sh.L. Appellant, D.B., is the biological mother of St.L. and Sh.L. St.L. was born in 2003 and Sh.L. was born in 2005. On May 21, 2008, appellee filed complaints alleging abuse, dependency and neglect of St.L. and Sh.L. Following an adjudication hearing, a judge found the children to be abused, dependent and neglected and awarded appellee temporary custody of the children. On November 16, 2012, appellee filed a motion for permanent custody of the children. The motion was granted on March 25, 2013.

{¶ 3} Appellant, R.L., sets forth the following assignment of error:

The trial court erred in granting the motion for permanent custody when the evidence presented at the hearing was insufficient as a matter of law.

{¶ 4} Appellant, D.B., sets forth the following assignment of error:

The trial court erred in granting the agency's motion for permanent custody [sic] is against the manifest weight of the evidence and is reversible error.

{¶ 5} Appellants' assignments of error will be considered together.

{¶ 6} "A trial court's determination in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence." *In re A.H.*, 6th Dist. Lucas No. L-11-1057, 2011-Ohio-4857, ¶ 11, citing *In re Andy-Jones*, 10th

Dist. Franklin Nos. 03AP-1167 and 03AP-1231, 2004-Ohio-3312, ¶ 28. We recognize that, as the trier of fact, the trial court is in the best position to weigh the evidence and evaluate the testimony. *Id.*, citing *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Thus, “[j]udgments 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.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 7} A juvenile court may grant permanent custody of a child to a public services agency if the court finds, by clear and convincing evidence, two statutory prongs: (1) the existence of at least one of the four factors enumerated in R.C. 2151.414(B)(1), and (2) that the child’s best interest is served by a grant of permanent custody to the children’s services agency. *In re M.B.*, 10th Dist. Franklin No. 04AP755, 2005-Ohio-986, ¶ 6. Clear and convincing evidence requires that the proof “produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established .” *In re Coffman*, 10th Dist. Franklin No. 99AP-1376, 2000 WL 1262637 (Sept. 7, 2000), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 8} Once a finding is made by the court satisfying one of the factors enumerated in R.C. 2151.414(B)(1), its analysis turns to the second prong, the best interests of the child. In making this determination, R.C. 2151.414(D)(1) provides that the court shall consider all relevant factors, including, but not limited to, the following:

(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 ending on or after March 18, 1999;

(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.

{¶ 9} The factors set forth in R.C. 2151.414(E)(7) through (11) include (1) whether the parents have been convicted of or pled guilty to various crimes, (2) whether medical treatment or food has been withheld from the child, (3) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse, and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code

requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent, (4) whether the parent has abandoned the child, and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶ 10} Ohio courts uniformly hold that “[n]on-compliance with a case plan is grounds for termination of parental rights.” *In re Campbell*, 138 Ohio App.3d 786, 793, 742 N.E.2d 663 (10th Dist.2000).

{¶ 11} At the time the complaints for abuse, dependency and neglect were filed in this case, the children were living with D.B. R.L. was living with his father. The complaints resulted from D.B.’s report to appellee that three-year-old Sh.L. was exhibiting sexually inappropriate behavior in that she was asking people to touch her vaginal area. A brief investigation revealed that a friend of D.B.’s named David sometimes spent the night at their home and that he sometimes slept with Sh.L. It was also discovered that D.B. frequently allowed inappropriate people to stay in the house with her children. These people included a woman with a history of prostitution and substance abuse, a registered sex offender and two men who have been accused of sexually abusing children.

{¶ 12} At trial, Joy Fruchey testified that she is a psychotherapist who provided therapy to the children while they were place in foster care. Both children were having frequent tantrums and exhibiting inappropriate sexual behavior. Fruchey testified that Sh.L. told her that she was made to sit naked on someone’s lap while that someone

inserted his fingers into her vagina. She would also frequently rub her private parts and simulate humping motions. St.L., between the ages of five and seven, would frequently masturbate in front of others. Fruchey opined that since such behavior is not typical of a boy that age, the behavior must have been learned.

{¶ 13} Tiffany Roloff testified that she is the caseworker for the children. She described the case plan developed for appellants. The goals were for them to attend counseling to address the sexualized behavior of their children. Both were to maintain clean homes, refrain from substance abuse and seek employment.

{¶ 14} When she first became involved in the case, the children, following a brief period in foster care, had been placed with R.L., his current wife, his parents, and three other children. Roloff testified that initially things went well, although R.L.'s counseling attendance was inconsistent. When bruising was found on Sh.L.'s buttocks, R.L. admitted to physically striking Sh.L. with a board for disciplinary reasons. Roloff described the home as unclean and chaotic because nine people were living together. The children were ultimately removed from R.L.'s custody.

{¶ 15} A new case plan was developed in 2010 with similar goals. At this time, D.L. had moved to Hicksville, Ohio. She lived in a trailer with a new husband. The trailer had a hole in the floor, broken windows, a leaking roof, and a fire damaged front porch. In addition, she had multiple cats. Cat urine and feces were found throughout the trailer. Medications were left out and cigarette butts were left on the floor. Roloff also

observed drugs and drug paraphernalia. As with R.L., D.B.'s attendance at counseling was inconsistent.

{¶ 16} An amendment to the case plan ordered R.L. to not allow sex offenders to live in his home. Roloff testified that R.L. did not comply with this order.

{¶ 17} In addition to the children's sexualized behavior, Roloff testified that the children have special needs in that they are learning disabled and have speech impediments, issues that appellants have not addressed.

{¶ 18} Margaret Stickan, a registered nurse, testified that she works at the Center for Child and Family Advocacy in Napoleon, Ohio, as a home based therapist. She mostly deals in issues regarding parenting, anger and domestic violence. In 2011, appellee referred R.L. to her for counseling because of a domestic violence incident that occurred while the children were in his custody. She described the home conditions as atrocious. The children were never supervised in the morning because R.L. was always sleeping. Stickan attributed his inability to wake up in the morning as a side effect of the medication he takes for his seasonal depression. She testified that R.L. had abused alcohol in the past but he was now sober. Overall, she concluded, R.L. was cooperative throughout his therapy.

{¶ 19} The children's guardian ad litem did not testify but her report was admitted into evidence. In her report, she recommended that appellee be given permanent custody of the children. Her report can be summarized as follows.

{¶ 20} The children have been in three different foster homes since they were removed. They require a lot of care. Both children are taking medication for attention disorders. Both children have had behavioral problems and require mental health counseling. St.L. has a significant speech impediment which makes it hard for people to understand him. He is currently receiving speech therapy once a week at school as well as mental health counseling every other week. His foster parents report that he has made significant gains in reading since the start of school but he still struggles with math and spelling. He has stated he would like to live with D.B. as long as D.B.'s mother did not live with them. Sh.L. has a correctable vision problem which requires her to wear a patch over one of her eyes. She too receives speech therapy. The guardian was unable to determine Sh.L.'s preference for placement.

{¶ 21} R.L. has three other children with his current wife. All three of those children are in foster care. R.L. has not worked in three years and his income consists of approximately \$500 a month in partial disability payments. He claims to live with his mother in a duplex in Napoleon, Ohio. The guardian, however, noted she was not convinced R.L. actually lived at the duplex. As for R.L.'s mother, the guardian acknowledged that she has a long, close relationship with the children and that she has expressed an interest in becoming their legal guardian. She has an erratic work schedule with a temporary agency. While the guardian recognized that R.L. and his mother may be able to provide for the children's basic care, she expressed doubt that they are equipped to handle the amount of care the children need which includes near, constant

supervision and extensive intervention and assistance in their educational and mental development.

{¶ 22} As for D.B., the guardian states that she is in an unstable marriage with no means of independent support. She gets by on her husband's social security stipend and food stamps. She and her husband have a child who was removed from their custody by Defiance County Jobs and Family services and placed with the paternal grandparents. D.B. admitted to the guardian that she cannot be the primary caregiver of the children but that she would prefer they be placed with R.L. and his mother so she could see them.

{¶ 23} In its judgment entry granting appellee permanent custody, the court found there was clear and convincing evidence, pursuant to R.C. 2151.414(B)(1), that it was in the best interest of the children to grant permanent custody to appellee. Moreover, the court found that the children had been in the temporary custody of appellee for 12 or more months of a consecutive 22 month period. R.C. 2151.414(B)(1)(d).

{¶ 24} The court, citing the testimony at trial, found that appellants both have limited abilities and resources to parent their children. The court declined to interview the children to determine their preference for placement based on the advice of their foster mother and current therapist who thought the questioning would be too stressful for the children. Regarding the children's need for a legally secure permanent placement, the court noted:

Both foster parents testified that if the children were eligible to be adopted that they would consider adopting them and not have them

disrupted. Without a grant of permanent custody both children would continue in a state of limbo, dealing with visitation issues, and without a legally secure permanent placement.

{¶ 25} The court also found, pursuant to 2151.414(E)(8), that R.L. withheld medical treatment from the children when they were in his custody in that he failed to see they continued counseling, as required by his case plan, during the interim period before appellee once again removed the children.

{¶ 26} 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 and was not against the manifest weight of the evidence. Accordingly, both of appellants' assignments of error are found not well-taken.

{¶ 27} On consideration whereof, the judgment of the Fulton 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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