

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

IN THE MATTER OF:

A.S.L., et al.

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CASE NOS. CA2010-09-023
CA2010-09-024

OPINION
5/20/2011

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. 09AND0395 & 09AND0396

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Joshua W. Beasley, 8 East Main Street, West Jefferson, Ohio 43162, for appellant, B.L.

HENDRICKSON, P.J.

{¶1} Appellant, the biological father of A.S.L and B.L., appeals a decision of the Fayette County Common Pleas Court, Juvenile Division, granting permanent custody of the children to the Fayette County Children Services Agency.

{¶2} On April 17, 2009, A.S.L., age five, and B.L., age two, were discovered in a

park with their ten-year-old sister and no adult supervision. The children were extremely dirty and B.L. was wearing only a diaper. Police followed the children home and found the residence in deplorable condition, with drugs, drug paraphernalia, knives and razor blades within reach of the children.

{¶13} The parents were charged with child endangering and in addition, appellant was also charged with drug offenses. The children were placed in the temporary custody of Fayette County Children Services. On July 8, 2008, the trial court found the children were abused and neglected. The agency moved for permanent custody in October 2010. Hearings were held on the motion in March and May 2010.

{¶14} At the hearings, evidence was presented to show that after the removal of the children, both parents tested positive for marijuana. A case plan was prepared for both parents that required them to obtain and maintain employment and contribute financially to the family. The home was to be kept clean and free of dangers to the children. The parents were to attend parenting classes, and to complete psychological and drug abuse assessment and follow any recommendations.

{¶15} Evidence was presented to show the children have special needs. A.S.L. is on medication for ADHD and has problems controlling her emotions. She has impulsivity issues and issues with boundaries. On removal at age five, she did not know her alphabet and could not recognize sounds or numbers more than one to ten. She has been attending extensive counseling since her removal. The younger child, B.L., has frequent meltdowns where he kicks, screams and throws himself on the floor. He also has speech problems and issues with boundaries. Both children hoarded food after their removal. Evidence was presented that although progress was initially slow, both children have been making progress since their removal.

{¶16} After the mother was released from jail, she began parenting classes,

completed a psychological assessment, and began counseling. The mother moved to Columbus with her parents and then, after talking with an old boyfriend for a week, moved in with him. Her boyfriend lives in a two-bedroom trailer and has his children in the home every other weekend. Her boyfriend has a previous conviction for domestic violence and his children have ADHD and problems biting and scratching others. The mother obtained employment with a temporary agency in November 2009 and maintained that employment.

{¶17} After his release from jail, appellant moved in with his parents where his brother, who was accused of sexually abusing A.S.L., also lived. Appellant later moved into a home with his 18-year-old girlfriend, but the home is very close to his parents and brother. He works doing jobs for his landlord to pay for the rent and utilities. At the hearing, he claimed to be applying for jobs and stated that he collects scrap and sells night crawlers. His girlfriend is unemployed and appellant has not made payments on his child support obligations. Neither appellant nor his girlfriend has a driver's license. Concerns were expressed by the caseworker about the proximity to appellant's brother, the condition of the trailer appellant was living in, and the girlfriend's ability to parent children with special needs. In addition, there was concern about the lack of support for the children, the unresolved portions of the case plan, and concerns about the level of commitment to the children.

{¶18} At the hearing, evidence was also presented that appellant completed a mental health assessment and has been attending counseling. He is taking medicine for depression, anxiety and bi-polar disorder and a shot for mood disorder. He has not completed parenting classes. At the May 17, 2010 hearing, appellant tested positive for marijuana. He admitted smoking the substance due to being "stressed a lot."

{¶19} Visitation was initially suspended based on the behaviors of the children, the recommendation of A.S.L.'s therapist, who recommended no contact during the initial treatment process, and because the agency felt appellant needed to attend anger

management classes. Once visitation was resumed, both parents had issues with attending visitations at times. At visitations, both parents showed appropriate parenting and the children enjoyed seeing their parents.

{¶10} On August 25, 2010, after considering all of the evidence at the hearings, the trial court granted permanent custody of the two children to the agency. Appellant now appeals the trial court's decision to grant permanent custody of the children to the Fayette County Children Services Agency. He raises the following single assignment of error for our review:

{¶11} "THE TRIAL COURT ERRED WHEN IT FOUND CLEAR AND CONVINCING EVIDENCE THAT A GRANT OF PERMANENT CUSTODY WAS IN THE CHILDREN'S BEST INTEREST."

{¶12} Before a natural parent's constitutionally protected liberty interest in the care and custody of his child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶13} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned;

the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, 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)(a), (b), (c) and (d); *In re E.B.*, Warren App. Nos. CA2009-10-139 and CA2009-11-146, 2010-Ohio-1122, ¶22.

{¶14} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that the children have been in the temporary custody of the agency for more than 12 months of a consecutive 22-month period as of the date the agency filed the permanent custody motion. However, appellant does dispute the juvenile court's finding that granting permanent custody of the children to the agency is in the children's best interest.

{¶15} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶16} "(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;

{¶17} "(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;

{¶18} "(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;

{¶19} "(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;

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

{¶21} With respect to R.C. 2151.414 (D)(1)(a), the juvenile court found that the children interact well with their parents during visits and that they also have a good relationship and interaction with their foster parents. The court further found that both parents are cohabitating with other people who basically have no relationship with either of the children. The court further found that the agency would not place the children in the mother's home due to her boyfriend's domestic violence conviction.

{¶22} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that the children are now seven and four years old and the guardian did not ascertain their wishes because of their ages and no evidence on this issue was presented. The guardian ad litem recommended that the court grant permanent custody to the agency.

{¶23} With respect to R.C. 2151.414(D)(1)(c), the juvenile court found that the children have been in the temporary custody of the agency since their removal in April 2008, that they have been in two different foster homes and in the current foster home since January 30, 2009.

{¶24} With respect to R.C. 2151.414 (D)(1)(d), the juvenile court found that the children are in need of a legally secure, permanent placement. The court found that the children suffer emotionally and A.S.L. struggles academically. The court concluded that the challenges the children face demand that they have a routine, structure and environment of people who are steady and reliable.

{¶25} With respect to R.C. 2151.414(D)(1)(e), the court found that the parents were convicted of endangering the children. The court further found that the father was convicted of drug offenses, and was in treatment, but the treatment did not begin until three months after the cases were filed. The court also found as indicated earlier, that the mother lives

with a man who has been convicted of domestic violence.

{¶26} The court also considered R.C. 2151.414(E)(1) and found that in considering the diligent efforts of the agency to assist the parents, nothing was accomplished while they were in jail, but referrals were made on release and the parents began and made some progress on the plan. The parents then parted ways, moving in first with their respective parents, then each moved in with a paramour and no progress was made on the case plan. The court found visitations were not consistent with either parent. The court found that starting with the filing of the permanent custody motion and especially after the first hearing date on the motion, the parents began to work on the plan and to utilize the services made available to them.

{¶27} We find no error in the court's determination that permanent custody is in the children's best interest. The court properly considered the above factors and determined that a grant of permanent custody was in the best interest of the two children.

{¶28} Appellant's argument on appeal centers on his claims that he has a strong bond with the children, has adequate housing and basic necessities and that he is able to keep the children away from his brother, who is accused of sexually abusing A.S.L. However, the court addressed the fact that visitation has gone well and found that the fact that the parents had good visits with the children does not assure that they can parent the children full-time. The court found the parents struggle to meet their own basic needs and that the parents had two years to establish an ability to provide for the children both financially and emotionally, but have not provided any assurance of their ability to do so. The court found that the two-year time frame in the statute was established to stop the practice of giving unlimited time to parents while their children remain in limbo, and the parents have not established during this time that they can parent the children. We find no error in the court's analysis on this issue. Accordingly, appellant's assignment of error is overruled.

{¶29} Judgment affirmed.

PIPER and HUTZEL, JJ., concur.

[Cite as *In re A.S.L.*, 2011-Ohio-2421.]