

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

B.H.,

DEPENDENT CHILD

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 09AP020012

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court
of Common Pleas, Juvenile Court Division,
Case No. 07JN00634

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 9, 2009

APPEARANCES:

For Mother - Appellant
Shannon N. Crolley

For Appellee
Tuscarawas County Job & Family Services

NICOLE R. STEPHAN
221 Front Ave. S.W.
New Philadelphia, Ohio 44663

JEFF KIGGANS
Tuscarawas County Job & Family Services
389 16th St. S.W.
New Philadelphia, Ohio 44663

For Father
James Hart

Guardian ad Litem

SHARON BUCKLEY
152 Broadway, Suite 101
New Philadelphia, Ohio 44663

KAREN DUMMERMUTH
349 E. High Ave.
P.O. Box 494
New Philadelphia, Ohio 44663

Hoffman, J.

{¶1} Appellant Shannon N. Crolley (“Mother”) appeals the January 14, 2009 Judgment Entry entered by the Tuscarawas County Court of Common Pleas, Juvenile Division, which terminated her parental rights, privileges, and responsibilities with respect to her minor child, and granted permanent custody of the child to Appellee Tuscarawas County Job and Family Services (“the Department”).

STATEMENT OF THE FACTS AND CASE

{¶2} Mother and James Hart II are the biological parents of B.H. (D.O.B. 5/26/07).¹ The Department became involved with the family when B.H. was three weeks old. At that time, Mother and Hart were living together and the Department had concerns regarding domestic violence between the two. On June 4, 2007, Mother accused Hart of domestic violence. The charges were ultimately dismissed and the trial court ordered Mother to pay court costs after finding she had fabricated the charges. Mother again accused Hart of domestic violence stemming from an incident which occurred on July 24, 2007. Hart subsequently pled guilty to a reduced charge. Thereafter, Mother and Hart began to live at separate residences, but continued to antagonize each other. The Department worked with Mother through a diversion plan. During that time, B.H. lived at the home of his maternal grandparents, Randy and Doris Hoagland.

{¶3} Following a visit which took place at the Department, Mother refused to submit to a drug screen. Mother later admitted smoking marijuana during the previous

¹ James Hart II is not a party to this appeal.

two weeks. While in the parking lot, Mother flew into a fit of rage at the Hoaglands, took five month old B.H., and began to walk down Old Route 21 in heavy traffic. Thereafter, the Department requested the trial court conduct a shelter care hearing, which occurred on October 30, 2007. During the hearing, Mother behaved in such an emotionally unstable manner, the trial court ordered she be taken to Barberton Citizens Hospital where she remained for three days. The trial court placed B.H. in the temporary custody of the Department. On October 31, 2007, the Department filed a complaint, alleging neglect and dependency.

{¶4} The trial court conducted an Adjudicatory Hearing on November 28, 2007. The Department dismissed the neglect allegation, and Mother admitted to dependency. The trial court instructed the guardian ad litem to furnish a report regarding the placement of the child with Randy and Doris Hoagland. The trial court conducted a dispositional hearing on December 18, 2007, at which time a case plan was approved and adopted. Mother's case plan required her to undergo a psychological evaluation, complete parent education classes, obtain stable housing and employment, complete a drug and alcohol assessment, and submit to random drug screens. The trial court ordered a home study of the Hoagland's home, and ordered the Hoaglands to submit to psychological evaluations. The trial court continued temporary custody of the child with the Department. Mother filed a request for visitation on April 30, 2008. After the parties reached an agreement, the trial court permitted Mother to have visitation with B.H. as acceptable to the Department.

{¶15} On September 5, 2008, the Department filed a Motion to Modify Prior Disposition from Temporary Custody to Permanent Custody. The Department sought permanent custody as a result of Mother's incarceration in the Tuscarawas County Jail and her failure to make any progress on the case plan. The trial court conducted the hearing on the department's motion for permanent custody on January 8, 2009.

{¶16} Geoff Geers, a Department worker, testified he was assigned to the family in September, 2007. Geers explained the Department became involved with the family as a result of incidents of domestic violence between Mother and Hart, as well as the fact both parents tested positive for drugs. Geers set forth the requirements of Mother's case plan. He added, although Mother began the case plan services, the services ceased because Mother was incarcerated four times during the course of the proceedings. Mother's incarcerations included five days in jail for a conviction for criminal damaging in September, 2007; thirty days for a probation violation in December, 2007, for a prior charge of driving under suspension; a period of incarceration from February 12, 2008, through April 7, 2008; and the fourth period of incarceration from May 6, 2008, through August 9, 2008. Geers explained Mother had been in the Harbor House Program, but was terminated and returned to jail. At the time of the hearing, Mother was on probation for three years for a felony forgery conviction.

{¶17} Geers stated B.H. has been with his foster family for a year and a half, a large portion of his life, and was very bonded with them. The foster parents are interested in adopting the child. Geers explained B.H. had absolutely no bond with Mother because Mother had been in jail approximately 180 days throughout the course of the matter. Geers noted the Hoaglands, the maternal grandparents, wanted custody

of B.H at one point during the proceedings. The Hoaglands were instructed as to the requirements including a psychological and home study, but they never commenced the process.

{¶18} Dr. Ragendra Misra, a consulting psychologist with Community Mental Health Care in Dover, Ohio, conducted a psychological evaluation of Mother. Although Mother's cognitive skills were in normal range, Dr. Misra found Mother to be significantly limited in the areas of comprehension, insight, and judgment. Mother demonstrated a limited knowledge of practical things, such as an awareness of social norms of behavior, and has difficulty in abstract reasoning. With respect to Mother's behavior, Dr. Misra found Mother resentful towards authority and conventional norms of behavior. Dr. Misra explained Mother is unable to assess the severity of a situation, acts out impulsively as a result of a fear of losing control, and does not want to function within a structured environment. Mother's personality suggests she may have limited patience with a child.

{¶19} The result of the clinical interview showed Mother had poor comprehension and poor judgment. Mother's pattern of criminal behavior and jail time caused Dr. Misra to be concerned about her ability to learn from her past mistakes. The psychological testing revealed a clinically significant difference between Mother's verbal and written abilities. Dr. Misra noted such an individual prefers to act rather than to think before acting. Dr. Misra had concerns about Mother's impulse control, and added such would affect her ability to adequately parent. Dr. Misra observed a pattern of defiance and resentment during the evaluation. Dr. Misra concluded Mother shows significant limitations in providing adequate care for her child. The doctor added with therapy, Mother might be able to improve her skills for distress tolerance, emotional

regulation, and interpersonal effectiveness. Dr. Misra concluded, at the time of his evaluation, Mother did not seem ready to have custody of her son.

{¶10} Star Jones, an alcohol and drug counselor with Harbor Halfway House, testified Mother was referred to the program as part of her probation. Jones explained Mother was required to complete the four-month residential treatment program with the goal of maintaining sobriety and gaining independent living skills. Jones stated Mother did not complete the program, and actually was asked to leave due to behavioral problems, denying and minimizing her drug use, difficulty following rules, and difficulty getting along with other clients and the staff. Jones stated Mother did not make any progress in treatment and counseling during her one month at the facility. When Mother was discharged, she was returned to jail.

{¶11} The guardian ad litem filed a written report on January 8, 2009. Because Mother had not fully and completely addressed her substantial, long-term drug, alcohol and mental health issues, the guardian recommended permanent custody of the child be given to the Department.

{¶12} Via Judgment Entry filed January 14, 2009, the trial court terminated Mother's parental rights, privileges and obligations, and granted permanent custody of B.H. to the Department.

{¶13} It is from this judgment entry Mother appeals, raising the following assignments of error:

{¶14} "I. THE TRIAL COURT'S DECISION AWARDED PERMANENT CUSTODY TO TUSCARAWAS COUNTY JOB AND FAMILY SERVICES AND TERMINATING APPELLANT'S PARENTAL RIGHTS WAS AGAINST THE MANIFEST

WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE PURSUANT TO R.C. 2151.414.

{¶15} “II. THE TRIAL COURT ERRED IN FINDING TUSCARAWAS COUNTY JOB AND FAMILY SERVICES EXPENDED REASONABLE EFFORTS TO REUNIFY THE CHILD WITH APPELLANT.”

{¶16} This case comes to us on the expedited calendar and shall be considered in compliance with App. R. 11.1(C).

I

{¶17} In her first assignment of error, Mother maintains the trial court’s decision to award permanent custody of B.H. to the department and decision to terminate her parental rights was against the manifest weight of the evidence and not supported by clear and convincing evidence.

{¶18} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (Feb. 10, 1982), Stark App. No. CA5758. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶19} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing, and provide notice, upon filing of a motion for permanent custody of

a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶20} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, 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; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶21} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; and (4) 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.

{¶22} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶23} If the child is not abandoned or orphaned, then the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶24} Mother argues the trial court's findings were unsupported by the evidence and testimony presented. Mother asserts there was testimony which established she had engaged in case plan services. Specifically, Mother completed parent education classes, and had stable housing. Mother adds she engaged in many case plan services and either completed or was still engaging in those services. Dr. Misra recommended cognitive behavior therapy, however, such therapy was not available at Community Mental Health and the doctor did not know of any facility in the area which utilized this therapy. Mother presented witnesses who testified she was engaged in various treatments through her probation.

{¶25} The case plan required Mother to attend anger management counseling; complete an assessment at Harbor House and follow all recommendations; complete

the Department's parenting classes; obtain and maintain stable housing and employment; keep bills up-to-date for a period of at least six (6) months; and obtain a drug and alcohol assessment. Following the shelter care hearing in October, 2007, Mother began to participate in some of the case plan services. However, Mother was incarcerated from December 24, 2007, through January 23, 2008, then again from February 12, 2008, through April 7, 2008, and did not make any progress on the case plan during these periods.

{¶26} Dr. Misra conducted his psychological assessment of Mother while she was incarcerated. Dr. Misra diagnosed Mother with antisocial personality disorder, noting she showed "significant limitations in providing adequate care for her son", and did "not seem ready for custody" of the child. The doctor recommended supervised visits at the Department. Mother did not follow-up with Dr. Misra despite his recommendation she do so.

{¶27} Star Jones stated Mother was admitted to Harbor House on April 7, 2008, as part of her probation. Mother was required to complete a four-month residential treatment program. Mother was terminated from the program on May 6, 2008, due to her behavior, her minimization of her drug use, and her failure to get along with other residents and the staff. Mother returned to jail. Jones noted Mother was informed she could return to Harbor House when she completed her jail sentence, however, Mother did not do so.

{¶28} Mother began serving a three-year term of probation in August, 2008. The probation stemmed from a 2007 offense, for which she had been convicted while she was incarcerated on other charges. As part of the terms of her probation, Mother was

prohibited from driving without a valid driver's license. Nonetheless, Mother had a pending traffic violation. A conviction on the traffic violation would result in a probation violation, which could potentially lead to an eleven-month term of incarceration. Mother was also inconsistent in her attendance at substance abuse classes through her probation. The therapy Mother received through her probation did not meet the criteria recommended by Dr. Misra.

{¶29} With respect to the best interest of the child, the evidence established the child did not have any bond with Mother. Mother had not had consistent visitation with B.H. due to her repeated incarcerations throughout the matter. The child was bonded with his foster parents, and they were interested in adopting him. Mother acknowledged she has more to do before she would ask for return of custody. The final hearing was conducted more than fourteen months after the case was opened.

{¶30} Based upon the foregoing and the entire record in this matter, we find the trial court's decision to terminate Mother's parental rights, privileges and responsibilities and grant permanent custody of the child to the Department was not against the manifest weight of the evidence, and was supported by clear and convincing evidence.

{¶31} Mother's first assignment of error is overruled.

II

{¶32} In her second assignment of error, Mother contends the trial court erred in finding the Department used reasonable effort to reunify the family.

{¶33} Pursuant to R.C. 2151.419, the agency which removed the child from the home must have made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, or make it

possible for the child to return home safely. The statute assigns the burden of proof to the agency to demonstrate it has made reasonable efforts.

{¶34} R.C. 2151.419 does not apply in a hearing on a motion for permanent custody filed pursuant to R.C. 2151.413 and 2151.414. *In re C.F.*, 113 Ohio St.3d 73, 81, 862 N.E.2d 816, 2007-Ohio-1104 (Citation omitted). Nonetheless, we find the Department did make reasonable efforts. The Department implemented a comprehensive plan to assist Mother in remedying the problems which caused the child to be removed. As discussed in assignment of error I, *supra*, Mother failed to make any progress on the plan. Her completion of case plan services was continuously disrupted due to her repeated incarceration. The trial court found the Department had made all reasonable, diligent efforts and had worked with Mother with no significant improvement.

{¶35} Although the trial court was not required to make a reasonable effort determination, based upon our review of the record, we find substantial evidence to establish the Department used reasonable efforts to reunify the family, but Mother made no significant progress toward alleviating the Department's core concerns for B.H.

{¶36} Mother's second assignment of error is overruled.

By: Hoffman, J.

Farmer, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

