

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

In the Matter of: A.S.

Court of Appeals No. F-10-015

Trial Court No. 2082031

DECISION AND JUDGMENT

Decided: November 12, 2010

* * * * *

Jeffrey J. Horvath, for appellant father.

Christine M. Smith, for appellant mother.

Scott A. Haselman, Fulton County Prosecuting Attorney, and
T. Luke Jones, Assistant Prosecuting Attorney, for appellee.

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OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Fulton County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellant mother and appellant father and granted permanent custody of their child A.S. ("A.") to appellee Fulton County Department of Job and Family Services ("agency"). For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appellant mother sets forth the following assignments of error:

{¶ 3} "First Assignment of Error

{¶ 4} "The trial court erred by finding that FCDJFS had made sufficient efforts regarding placement of [A.] with [father].

{¶ 5} "Second Assignment of Error

{¶ 6} "The trial court erred by finding that FCDJFS had made sufficient efforts regarding placement of [A.] with extended family.

{¶ 7} "Third Assignment of Error

{¶ 8} "[Mother] was prejudiced by not receiving at minimum potential parenting time rights due to the fact that the trial court's finding of permanent custody as against [father] was not supported by clear and convincing evidence and was against the manifest weight of the evidence."

{¶ 9} Appellant father sets forth the following assignments of error:

{¶ 10} "First Assignment of Error

{¶ 11} "The trial court's finding of permanent custody as against father was not supported by clear and convincing evidence and was against the manifest weight of the evidence.

{¶ 12} "Second Assignment of Error

{¶ 13} "The trial court abused its discretion by refusing to consider legal custody in lieu of granting the state's motion for permanent custody.

{¶ 14} "Third Assignment of Error

{¶ 15} "The trial court erred by finding that FCDJFS had made sufficient efforts regarding relative placement of A.S."

{¶ 16} The agency first became involved with this family in February 2008 when it received a report alleging neglect and emotional maltreatment of A., who was then approximately 18 months old. The allegations were based on domestic violence between mother and father occurring in the child's presence. The report also alleged hazardous home conditions. The agency investigated and found the allegations to be substantiated in that the home was filthy. Additionally, the parents admitted that father had thrown something at mother causing her ear to split open. The agency referred the family to a program designed to help with some of their issues as well as to a domestic violence counselor, and closed the case.

{¶ 17} Less than three months later, the agency received another complaint of neglect due to unsafe home conditions. The complaint alleged that the home was full of trash and that mother was not taking medications prescribed to treat her bi-polar condition. An investigator again found the home to be in an unsafe condition. Additionally, mother admitted that domestic violence had continued between her and father. A safety plan was put in place and A. was placed with his paternal aunt and uncle

with appellants' consent. The record reflects that shortly thereafter, father decided he no longer wanted the child placed with his aunt and would prefer to see A. in foster care.

{¶ 18} Mother and father then decided they no longer agreed with the family safety plan, which led the agency to file a complaint alleging A. to be a neglected and dependent child and requesting temporary custody. On May 30, 2008, the trial court granted the request for temporary custody and set the matter for hearing. On June 25, 2008, both parents entered admissions of neglect and A. was adjudicated a neglected child.

{¶ 19} The case proceeded with the goal of reunification with a case plan established in support of that end. Some of the goals included maintaining adequate and safe housing, finding and maintaining consistent employment, mental health assessments with appropriate aftercare, and continuing the domestic violence/family counseling that was already in place.

{¶ 20} Less than three weeks after the adjudication, the police were called to the family residence on another domestic complaint. Father was alleged to have been throwing things and destroying property. At that time, the parents had supervised visitation with A. By early September 2008, visitation was expanded to unsupervised; after one month without a domestic incident, the agency expanded visitation to include overnights.

{¶ 21} On November 4, 2008, another domestic incident occurred with father throwing and destroying things in the home. After that, the agency again imposed

supervised visitation. Mother moved into a domestic violence shelter eight days later. On November 17, 2008, when the matter was heard for an administrative review, father became disruptive, ripping up the case plan and using profane language. Later that day, father called the agency and said he had attempted suicide by slitting his wrists. By December 2, 2008, mother had left the shelter and was again living with father.

{¶ 22} On December 3, 2008, mother gave birth to a child; it is undisputed that appellant father herein was not the baby's father. A. was reunified with his parents at the end of December.

{¶ 23} On January 23, 2009, another domestic violence incident occurred which led to the placement of both children in foster care. In February, A. was placed with his maternal grandparents. Two more domestic violence incidents occurred between mother and father at the end of February and beginning of April 2009. A. was removed to foster care due to arguments between mother and the custodians.

{¶ 24} Unsupervised overnight visitation was reinstated in May 2009, but lasted only until June 10, 2009, when A. was observed to have bruises on his legs consistent with abuse. At that time, the agency again ordered supervised visitation. Two more domestic violence incidents occurred in June, and by August the situation had deteriorated so badly that mother was admitted to a hospital stress unit and father was charged with domestic violence.

{¶ 25} On August 14, 2009, the agency filed a motion for permanent custody. Domestic violence incidents continued to occur between that time and the final hearing

on May 10 and 11, 2010. On May 27, 2010, the trial court filed a detailed decision in which it ordered that the parental rights of both parents as to A. be terminated and that permanent custody of the child be granted to the Fulton County Department of Job and Family Services. It is from that judgment that mother and father appeal.

{¶ 26} In his first assignment of error, father asserts that the trial court's decision was not supported by clear and convincing evidence and was against the manifest weight of the evidence. Father claims that mother is unstable and that he was simply an innocent bystander during the couple's many domestic disputes.

{¶ 27} In granting a motion for permanent custody, the trial court must find that one or more of the conditions listed in R.C. 2151.414(E) exist as to each of the child's parents. If, after considering all relevant evidence, the court determines by clear and convincing evidence that one or more of the conditions exists, the 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. R.C. 2151.414(B)(1). Further, pursuant to R.C. 2151.414(D), a juvenile court must consider the best interest of the child by examining factors relevant to the case including, but not limited to, those set forth in paragraphs 1-5 of subsection (D). Only if these findings are supported by clear and convincing evidence can a juvenile court terminate the rights of a natural parent and award permanent custody of a child to a children services agency. *In re William S.* (1996), 75 Ohio St.3d 95. Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of

fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶ 28} At the final hearing in this matter, the trial court heard testimony from mother; father; two agency investigators; two caseworkers assigned to the family; a therapist assigned to the family from the Center for Child and Family Advocacy who testified that she saw no progress from mother or father over a period of 16 months; five police officers who responded to domestic violence calls regarding mother and father over a period of two years, one of whom "lost count after 100 calls;" two neighbors, and Dr. Wayne Graves, a psychologist who was referred by the court to appellants' case. The child's guardian ad litem stated that he stood by his report as submitted to the court. Based on his contact with mother and father, the guardian concluded in his report that A.'s parents displayed no self-control, parenting skills or initiative to improve the quality of their family life. Accordingly, the guardian recommended that A. be permanently placed in the custody of the Fulton County Department of Job and Family Services for adoptive placement. He further noted that A.'s foster parents have a strong desire to adopt A. and A.'s half-sibling, and noted as well that A. appears to be thriving in the foster home and is making significant developmental progress.

{¶ 29} On May 27, 2010, the trial court filed its judgment entry. The court found that the agency had gone to "extraordinary lengths" in its attempt to achieve reunification. The court noted "pervasive domestic violence" between mother and father, mother's mental health issues, filthy and hazardous conditions in the home, and the refusal of both

parents to follow through with their case plans. The court further noted evidence of father's failure to complete required counseling, his "spotty and contentious" participation in visitation with A., and mother's failure to continue her prescription medications and the resulting deterioration of her mental condition. Additionally, the trial court noted appellants' "constant pattern" of splitting apart and then reuniting for extremely short periods of time in reaction to incidents of domestic violence in the home.

{¶ 30} The trial court concluded that mother and father "cannot live together and will not live apart." While noting that Dr. Graves' psychological evaluations had been conducted 13 months before the final hearing, the trial court found, based on the evidence presented, that there had been no change in the parents' behavior in that time. The trial court also found that A. was thriving in his foster home. Accordingly, the trial court found clear and convincing evidence that A. cannot and should not be placed with his parents, either together or individually, within a reasonable period of time; that mother's mental illness is so pervasive and her compliance with medical treatment so "sketchy" that she will be unable to provide a home for A. within one year and probably indefinitely; and that father's resistance to counseling or other treatment and his unwillingness to change precludes placement of A. with him in the foreseeable future. The trial court further found that A. deserves a legally secure, safe environment and that permanent custody of A. should be granted to the Fulton County Department of Job and Family Services.

{¶ 31} Testimony reflected that father has been a participant in countless domestic violence incidents with mother since A.'s birth and that father has failed to follow through with case plan requirements. Further, father continually returned to live with mother, despite the constant fighting, which often resulted in injury or damage to property. Following an extensive evaluation of both parents, Dr. Graves offered the following conclusions: father demonstrates deficits in social and general judgments; father has been an active participant in conflict with mother and is not very accepting of mother's mental illness; father does not have good coping skills and seems unable to incorporate information received in anger management classes into his dealings with mother; father's relationship with mother is "intensely volatile," and the parents' ability to live with any sense of stability varies from week to week. Significantly, Dr. Graves concluded that the conflict between the parents "has a strong likelihood of continuing in a destructive pattern and with chronic and intractable frequency."

{¶ 32} Further, Dr. Graves testified that in order for father to be an acceptable placement, he would have to be separated completely from mother for "quite awhile," establish a regular and stable work pattern, have regular therapeutic contact and remain on medication management, remain drug and alcohol free and undergo screening for some time, and establish an external support system that includes caregivers to assist him. While Dr. Graves testified that father appeared to be affectionate and caring with A., Graves "would not go as far as to say he can take care of [A.]."

{¶ 33} This court has thoroughly reviewed the record of proceedings in this case, beginning with both parents' initial involvement with the agency in May 2008, through the hearing on the motion for permanent custody and the trial court's decision. 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, father's first assignment of error is not well-taken.

{¶ 34} In his second assignment of error, father asserts that the agency should have considered granting legal custody of A. to the agency or to the foster parents. Father argues that he had made significant progress in this case and had earned the right to continue making progress so that he might regain custody of A. in the future.

{¶ 35} There is no evidence in the record that the trial court refused to consider legal custody rather than permanent custody. There also was no evidence brought before the trial court at the time of the final hearing indicating that the foster parents would accept legal custody. Further, the trial court clearly and unequivocally found that an award of permanent custody to the agency was in A.'s best interest, which obviously precluded an award of legal custody to the agency or to the foster parents. Father's second assignment of error is not well-taken.

{¶ 36} In his third assignment of error, father asserts that the agency failed to make a sufficient effort to place A. with relatives. However, the record reflects that the agency initially placed A. with his paternal aunt and uncle from April 2008 until December 2008. A. was returned to his parents' home in late December but was removed in late January

2009 due to ongoing domestic violence. A. then was placed with his maternal grandparents in early February 2009. After that placement failed, A. was placed in foster care. Therefore, during the first two and one-half years of his life, A. was in the temporary custody of relatives for 12 months. It is clear that the agency and the trial court attempted relative placement for a significant amount of the time during which A. was removed from the home. Further, there is no evidence in the record that father provided the agency with the names of family members who might be interested in legal custody of A. One of the family's caseworkers testified at the final hearing that although she informed extended family members that they could contact the agency to set up visitation with A. she never heard from anyone. Accordingly, father's third assignment of error is not well-taken.

{¶ 37} Prior to addressing appellant mother's assignments of error, this court notes that mother acknowledged on the record at the final hearing that her current mental state did not allow her to raise A. She further testified to her belief that the best placement option for A. was with his father while she worked on gaining control of her mental health. Mother's arguments on appeal therefore arise from her opinion that the trial court should have awarded custody to father.

{¶ 38} In her first and second assignments of error, mother asserts that the agency did not extend sufficient effort to place A. with his father or with relatives. These arguments are not supported by the record and are therefore without merit. In its judgment entry, the trial court stated: "It is clear to this Court and has been proved by

evidence to the level of clear and convincing that this child cannot and should not be placed with these parents, *either together or individually* within a reasonable period of time." (Emphasis added.) The trial court's decision was based on its consideration of the agency's lengthy involvement with the family, extensive testimony as to father's parenting abilities and relationship with mother, and the agency's efforts to reunify A. with both of his parents. Accordingly, mother's first and second assignments of error are not well-taken.

{¶ 39} In her third assignment of error, mother asserts that she was prevented from receiving "parenting time rights" by the trial court's decision to grant permanent custody to the agency, which, she adds, was not supported by clear and convincing evidence and was against the weight of the evidence. Mother also argues that by not considering father, the trial court caused her to lose all parenting rights. We note first that mother's claim that the trial court did not consider awarding custody to father is completely erroneous. The record reflects that the trial court heard a great deal of evidence as to father's ability to parent A. The trial court's decision also reflects its careful consideration of the same. Further, mother lost her parental rights for the many reasons discussed above, not due to her perceived notion that the trial court failed to consider father's ability to parent A. on his own. As to mother's claim that the trial court's decision was not supported by clear and convincing evidence and was against the weight of the evidence, that argument was addressed and found to be without merit under father's first assignment of error. Accordingly, mother's third assignment of error is not well-taken.

{¶ 40} Upon consideration whereof, this court finds that 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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