

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

In re G.S., W.S.

Court of Appeals No. L-12-1070

Trial Court No. JC 09196521

DECISION AND JUDGMENT

Decided: August 8, 2012

* * * * *

James J. Popil, for appellant

Shelby J. Cully, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellant W.S., Sr., father of minor children G.S. and W.S., and granted permanent custody of the children to

appellee Lucas County Children Services. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant W.S., Sr., (“father”) is the father of G.S., born in 2005, and W.S., born in 2007. The children’s mother, whose parental rights also were terminated in this matter, has not appealed the trial court’s decision. Therefore, our review of the record will address only evidence and issues relating to father.

{¶ 3} Appellee Lucas County Children Services (“LCCS” or “agency”) first became involved with this family in August 2009 as a result of concerns over substance abuse by both parents, extremely poor housing conditions, domestic violence between the parents, and the involvement of both parents in the criminal justice system. At a shelter care hearing held on August 4, 2009, both parents agreed to a grant of temporary custody of G.S. and W.S. (“the children”) to appellant’s sister. At that time, appellant was ordered to complete a diagnostic assessment and a substance abuse assessment and to submit to random drug screens at the request of the children’s guardian ad litem or the caseworker.

{¶ 4} Mother agreed to a finding of dependency and neglect on September 9, 2009. At adjudication on October 22, 2009, father agreed to a finding of dependency and neglect with continued temporary custody granted to appellant’s sister. On September 16, 2010, the trial court granted a further extension of temporary custody of the children to their aunt. Custody of the children remained with the agency through 2011 and during that time, appellant successfully completed intensive outpatient

substance abuse treatment. Domestic violence services were added to his case plan and appellant eventually began to attend a batterer's intervention program. The agency also requested verification of independent housing. Appellant's visitations with the children progressed well until he was arrested and charged with several drug offenses in 2011.

{¶ 5} On October 14, 2011, the agency filed a motion for permanent custody of the children, who at that point had been in substitute care for over two years. As to father, the agency alleged that he was initially compliant with case plan services and had completed approximately 50 percent of his domestic violence program when he admitted relapsing in his drug use in early 2011. Father had begun using cocaine, and the agency had concerns that he was associating with the children's mother, who was also a drug abuser and non-compliant with her case plan. On April 11, 2011, father was arrested on various charges, including trafficking in drugs. The agency alleged that father had not returned to services at the time the complaint was filed and had not obtained independent, suitable housing, living "from place to place." As to the children, the agency alleged that they had participated in counseling, had met their goals, and were no longer in need of services. Both children were doing well in substitute care where their needs were being met.

{¶ 6} The permanent custody hearing was held on February 7, 2012. Father was present with counsel. Mother was not present and a motion to withdraw as counsel filed previously by mother's attorney was granted at that time. The trial court then heard testimony from the agency caseworker, appellant and the guardian ad litem, who was

present via telephone. After a discussion off the record regarding the guardian's appearing via conference call, counsel for father and for the agency both consented on the record to the arrangement.

{¶ 7} Caseworker Linda Rosenbloom testified that she began working with the family in 2010. As to father, Rosenbloom testified that the agency's concerns involved substance abuse, mental health, domestic violence, housing and a lack of substantial income. She noted that father completed his drug treatment in 2010 but relapsed in April 2011. The agency had father reassessed and reengaged in services in July 2011 but he participated for less than one month. Father failed to complete domestic violence treatment and eventually was arrested on drug trafficking charges; he did not reengage in any services after his arrest. Based on her discussions with father, Rosenbloom believed that father loves his children. However, father told Rosenbloom that he was "just not in a place right now" where he could care for them because he was living with friends and did not have a stable income. Father told the caseworker that he last used substances—which she believed included marijuana and possibly alcohol—about one month prior to the final hearing. Rosenbloom had encouraged father to reengage in services but she acknowledged that his future was uncertain due to the pending criminal charges. She believed he was struggling with his sobriety and mental health issues and was surrounded by people who were not supportive. The caseworker did not believe father could provide the children with the stability and consistency they needed. At the time of the final hearing, the children had been in the temporary custody of LCCS for approximately 30

months, first in a relative placement and then in a foster home. After the relative informed LCCS she was no longer able to care for the children, the agency unsuccessfully attempted to identify other suitable relatives for temporary custody.

{¶ 8} Rosenbloom further testified that G.S. did not have any special needs; W.S. had “anger issues” for which he was undergoing counseling. As a result of having witnessed domestic violence, both children also received counseling on how to keep themselves safe. Rosenbloom testified that the visitations with father that she witnessed had gone well. Ultimately, Rosenbloom concluded that it would be in the best interest of the children to be in the custody of LCCS so that the agency could seek a permanent home for them.

{¶ 9} Father testified that he attended about half of his domestic violence program before he “got into trouble and all of that and never completed it.” He further testified that he completed his drug treatment program and “was doing good for a minute and then relapsed.” When he reentered drug treatment, he “lost spirit and never completed [it]” because he felt that the world was against him and nothing he could do would help get his children back. He admitted struggling with drugs and alcohol and said he was facing a charge of trafficking in cocaine which he would have to resolve. Father testified to his visits with the children and how much he enjoyed seeing them. He also admitted not having stable housing of his own or sufficient income to support the children on his own but said he and the children could live with his father. He testified that three or four weeks prior to the hearing he started working part-time doing “minor mechanic work” for

approximately \$120 weekly. Father testified that he would do whatever he could to get his children back if he were given one more chance.

{¶ 10} Finally, the children's guardian ad litem, Alanna Pully, testified via telephone as to her contact with the family since the summer of 2009. Pully stated that she had regular contact with the children and father since that time and believed the children were happy in their foster home. She observed visitations and believed the children were bonded with father. Pully recommended permanent custody to LCCS but expressed hope that the children could be placed in an adoptive home under circumstances which would permit them to have contact with their father.

{¶ 11} On February 11, 2012, the trial court filed a detailed judgment entry in which it ordered that the parental rights of both parents as to G.S. and W.S. be terminated and that permanent custody of both children be granted to Lucas County Children Services. It is from that judgment that father appeals.

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

I. The trial court erred in granting appellee Lucas County Children Services Board's motion for permanent custody as the decision was against the manifest weight of the evidence.

II. The trial court erred in permitting the guardian ad litem to attend the permanent custody hearing by telephone.

{¶ 13} In support of his first assignment of error, father asserts that the trial court's findings were not supported by clear and convincing evidence and that it is in the

children's best interest to deny the agency's motion for permanent custody. Appellant argues that it is undisputed that he has a strong, positive relationship with the children, having visited with them on a daily basis during the two years they were in their aunt's custody.

{¶ 14} 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) exists 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.*, 75 Ohio St.3d 95, 661 N.E.2d 738 (1996). 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*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 15} Our examination of the record reveals that services were offered to father for over two years in an effort to remedy the problems which caused the children to be

removed from the home. Father did complete a substance abuse program but thereafter relapsed and was still using when the permanent custody motion was filed. Father did not complete his domestic violence program and failed to obtain either a job or stable housing. Additionally, father was facing at least one drug trafficking charge at the time of the final hearing, which carried with it the possibility of incarceration in the near future. Father did not attend any of the preliminary hearings on his criminal charges and knew he had outstanding warrants for his arrest at the time of the hearing on this matter.

{¶ 16} In its judgment entry, the trial court found at the outset that because the children had been in the temporary custody of LCCS for 30 consecutive months the court was not required to make findings pursuant to R.C. 2151.414(E). *See* R.C. 2151.414(B)(1)(d). Nevertheless, the trial court found as follows: pursuant to R.C. 2151.414(E)(1), following the placement of the children outside the home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused placement outside the home, both parents had failed continuously and repeatedly to substantially remedy the conditions causing their removal from the home; pursuant to R.C. 2151.414(E)(2), both parents' substance abuse is so severe that it makes them unable to provide an adequate permanent home for the children within one year after the final hearing; and pursuant to R.C. 2151.414(E)(16), father has had periods of incarceration and was arrested following the permanent custody hearing, facing the possibility of further incarceration.

{¶ 17} Finally, the trial court found that LCCS made reasonable efforts to prevent the need to remove the children from their parents' care and that such efforts were unsuccessful. The trial court concluded, pursuant to R.C. 2151.414(D), that an award of permanent custody was in the best interest of the children.

{¶ 18} Based on all of the foregoing, we find that the trial court's decision granting permanent custody of G.S. and W.S. to LCCS was supported by clear and convincing evidence. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 19} In his second assignment of error, father asserts that the trial court erred by permitting the guardian ad litem to testify at the permanent custody hearing by telephone. Appellant claims that the guardian could not perform her role in protecting the children's interest unless she was physically present in the courtroom.

{¶ 20} The guardian's responsibilities were essentially performed prior to the hearing, during many months of visits with the children and their parents. Further, as required, the guardian filed her written report and recommendations with the trial court on February 2, 2012. Before the hearing began, the court was informed that the guardian had given birth only two days prior to the hearing and was on maternity leave. The court discussed the situation with counsel and counsel for both parties agreed to the arrangement. The guardian was available by phone throughout the hearing and provided brief sworn testimony confirming her written recommendation that permanent custody should be awarded to LCCS.

{¶ 21} Appellant has not demonstrated how the guardian’s presence via telephone adversely affected the outcome of the case. Accordingly, appellant’s second assignment of error is not well-taken.

{¶ 22} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant 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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, 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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