

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

IN THE MATTER OF:

P.R., et al.

:
:
:
:
:
:

CASE NOS. CA2011-05-008
CA2011-05-009

OPINION
11/18/2011

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. 09AND0096, 09AND0098 and 10AND0299

Landis Terhune-Olaker, P.O. Box 895, Washington Court House, Ohio 43160, guardian ad litem

Thomas Arrington, 67 East High Street, London, Ohio 43140, for appellant, T.B.

Nicholas Adkins, 67 East High Street, London, Ohio 43140, for appellant, B.R.

Jess C. Weade, Fayette County Prosecuting Attorney, James B. Roach, 110 East Court Street, Washington Court House, Ohio 43160, for appellee, Fayette County Children Services

HENDRICKSON, P.J.

{¶1} Appellant-father, Travis B., and appellant-mother, Brenda R., appeal a decision of the Fayette County Court of Common Pleas, Juvenile Division, granting permanent custody of their biological children G.B. and T.B. to the Fayette County Department of Job

and Family Services (FCDJFS). Brenda also appeals the juvenile court's decision to grant permanent custody of her biological son, P.R., to FCDJFS. P.R.'s biological father, Lance H., is not a party to this appeal. For the reasons discussed below, we affirm the decision of the juvenile court.

{¶2} P.R. was born on June 13, 2004. Almost four years later, on April 3, 2008, G.B. was born. On February 17, 2009, P.R. and G.B. were taken into temporary custody by FCDJFS after Brenda left the children with an adult male and did not return to retrieve the children at the agreed upon time. The adult male turned the children over to the Washington Court House Police Department, who notified FCDJFS.

{¶3} On May 26, 2009, P.R. and G.B. were found to be dependent, and the juvenile court ordered the children to remain in the temporary custody of FCDJFS. At the time FCDJFS obtained custody of P.R. and G.B., Brenda's whereabouts were unknown and Travis was in prison. Brenda was later located and a case plan was created to reunify her with the children. The case plan required Brenda to participate in a substance abuse program and parenting program, maintain employment, and provide a home with working utilities.

{¶4} Travis was released from prison in June 2009. Upon his release, Travis became involved with FCDJFS. Pursuant to his initial case plan, Travis was required to obtain and maintain employment, obtain housing with working utilities, and attend a parenting program. His case plan was later updated to require that he undergo a substance abuse evaluation and submit to random drug screenings.

{¶5} On March 29, 2010, FCDJFS filed a motion for permanent custody of P.R. and G.B. At this time, Brenda and Travis were romantically involved and expecting another child. T.B. was born on April 10, 2010. On April 12, 2010, FCDJFS filed a complaint seeking permanent custody, or, in the alternative, temporary custody of T.B. The court granted

FCDJFS temporary custody of the child, and T.B. was removed from his parents' care. FCDJFS later filed an amended complaint seeking permanent custody of T.B.

{¶6} On August 18, 2010, FCDJFS withdrew its prayer for permanent custody of T.B. and its motion for permanent custody of P.R. and G.B. in order to give Brenda and Travis additional time to see if reunification was possible. More than four months later, on December 27, 2010, believing that Brenda and Travis had failed to make any forward progress on their respective case plans, FCDJFS moved for permanent custody of P.R., G.B., and T.B. A hearing was held on March 29, 2011, and on April 28, 2011, the juvenile court issued a decision granting permanent custody of all three children to FCDJFS.

{¶7} Both Brenda and Travis appeal the juvenile court's decision, each raising the following assignment of error.

{¶8} "THE TRIAL COURT ERRED IN THAT THE VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶9} Before natural parents' constitutionally protected liberty interest in the care and custody of their 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, 519-520.

{¶10} 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; CA2009-11-146, 2010-Ohio-1122, ¶22.

{¶11} The juvenile court found by clear and convincing evidence, and appellants do not deny, that P.R. and G.B. have been in the temporary custody of FCDJFS for more than 12 months of a consecutive 22-month period as of the date FCDJFS filed the permanent custody motion. The juvenile court also found by clear and convincing evidence that permanent custody of all three children is in the children's best interest. Brenda and Travis dispute the juvenile court's finding that granting permanent custody of P.R., G.B., and T.B. to FCDJFS is in the children's best interest. Brenda and Travis further dispute the juvenile court's finding that T.B. could not be placed within their care within a reasonable time, or should not be placed within their care.

{¶12} When considering whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent, R.C. 2151.414(E) states that "the court shall consider all relevant evidence." The statute further provides that if the court determines by clear and convincing evidence that one or more certain enumerated factors apply, "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." In the present case, the juvenile court found that the factors in R.C. 2151.414(E)(1) and (4) applied. R.C. 2151.414(E)(1) requires a finding that "[f]ollowing the placement of the child outside the

child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home." R.C. 2151.414(E)(4) requires a finding that "[t]he parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child."

{¶13} The evidence presented at the permanency hearing demonstrates that neither Brenda nor Travis have had regular visitation or communication with T.B. At best, their contact with the child has been minimal and sporadic. Even though FCDJFS had arranged transportation for Brenda and Travis so that they could visit with T.B. and attend his medical appointments, they consistently and repeatedly failed to visit with the child or attend his appointments. In fact, Brenda and Travis have not seen T.B. since November 13, 2010, the date of their last visitation with all three children. Further, although provided with the phone number for the foster family caring for T.B. and their other children, neither parent regularly called or communicated with the foster family to stay abreast of their children's development.

{¶14} The evidence presented further indicates that neither Brenda nor Travis have demonstrated that they are capable of providing financial security or a stable, permanent home for T.B. and his brothers. Kelly Sword, the FCDJFS caseworker assigned to work with T.B., G.B., and P.R., testified that Brenda and Travis' employment record was less than ideal. When FCDJFS first became involved with the children, Brenda was employed at McDonalds. She quit in February 2009 because she no longer liked the job. At the time she quit her job, Brenda did not have other employment lined up. She remained unemployed until late December 2010 or early January 2011. Travis also had difficulty obtaining and maintaining a

job. After being released from prison, Travis did some carpentry and construction work for John Heidler in exchange for a place to live. Travis was employed by Heidler for two different periods of time, each period extending between four to six months. Travis latest employment with Heidler ended in November 2010.

{¶15} Brenda and Travis' inability to maintain permanent employment affected their ability to provide a stable and permanent home. Sword testified that from February 2009 to the date of the permanency hearing, a time period extending just over two years, Brenda had lived at approximately seven different locations. Likewise, Travis had moved frequently, living in approximately six different locations.

{¶16} After reviewing the evidence presented at the permanency hearing, we find there was sufficient credible evidence to support the juvenile court's decision that T.B. could not be placed within Brenda or Travis' care within a reasonable time, and should not be placed within either of his parents' care. There is sufficient evidence to support the juvenile court's finding that Brenda and Travis failed to remedy the conditions which originally caused T.B. to be placed outside their care. We further find ample evidence to support the juvenile court's finding that Brenda and Travis failed to visit or communicate with T.B., and failed to show a willingness to provide an adequate permanent home for T.B. and his brothers.

{¶17} Brenda and Travis also argue the juvenile court's determination regarding the best interest of the children is against the manifest weight of the evidence. When considering the best interest of the child in a permanent custody hearing, R.C. 2151.414(D)(1) provides that, "the court shall consider all relevant factors, including, but not limited to the following:

{¶18} "(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;

{¶19} "(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;

{¶20} "(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 * * *;

{¶21} "(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;

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

{¶23} With regard to R.C. 2151.414(D)(1)(a), the juvenile court determined that there is scant evidence of any interaction between P.R., G.B., and T.B. and their biological parents. The court found, however, that all three children had a good relationship and interacted well with their foster family.

{¶24} With regard to R.C. 2151.414(D)(1)(b), the court found that the children are too young to express their wishes. The court further found that the guardian ad litem reported that P.R. refers to his biological mother by her full name.

{¶25} In considering the custodial history of the children under R.C. 2151.414(D)(1)(c), the court found that P.R. and G.B. had been in FCDJFS' custody since February 17, 2009. The court further found that T.B. had been in the agency's custody since April 12, 2010.

{¶26} With regard to R.C. 2151.414(D)(1)(d), the court found that the children are in need of a legally secure placement. The court found that Brenda and Travis' on-again, off-again relationship, their frequent moves, their lack of visits or contact with the children, and their lack of interest in the children's concerns, physical health, emotional health, and

educational progress demonstrate that Brenda and Travis cannot provide secure placement.

{¶27} The juvenile court found that the factors in divisions (E)(7) to (E)(11) of R.C. 2151.414(D)(1) did not apply.

{¶28} We find no error in the juvenile court's determination that permanent custody is in the children's best interest. The court properly considered the above factors in reaching its determination that the grant of permanent custody was in the best interest of all three children. The record indicates that P.R., G.B., and T.B. do not have a strong relationship with Brenda or Travis. Neither parent regularly visits or communicates with the children. The last time Brenda and Travis saw the children was on November 13, 2010, even though Brenda and Travis lived within walking distance of the visitation center in Washington Court House where their visits with the children were scheduled to take place for the five months preceding the permanency hearing. On December 25, 2010, Brenda and Travis sent a text message to the children's foster mother, wishing the children a "Merry Christmas," but they did not call to speak to the children or request a visit with the children.

{¶29} Beyond failing to visit with the children on a regular basis, Travis and Brenda also failed to stay abreast of the children's educational needs and their physical and emotional health. Although Brenda was informed of P.R.'s behavioral problems and educational issues, she failed to attend any of his counseling sessions and did not attend his individualized education program (IEP) testing or meetings. Brenda and Travis failed to attend G.B.'s numerous medical appointments, even after being informed that G.B. had been diagnosed by his doctor as failing to thrive and having suffered from kidney reflux and giardia. Although Travis and Brenda attended T.B.'s initial medical appointments, by the middle of June 2010, they stopped attending his appointments as well.

{¶30} Because Brenda and Travis failed to regularly visit the children or keep up-to-date on the children's emotional and physical progress, they have missed the opportunity to

bond with the children. Conversely, the record indicates that all three children have bonded with their foster family. The children act lovingly towards their foster mother and father and have bonded with their foster parent's four biological daughters. P.R., G.B., and T.B. routinely play with their foster sisters. The children are also encouraged to participate in family activities, such as attending church and sharing in family 4-H projects.

{¶31} The record further indicates that under his foster family's care, P.R.'s emotional health has significantly improved. Both P.R.'s foster mother and the guardian ad litem reported that when P.R. first came into foster care he was very flat and emotionless and did not relate to G.B. as a brother. P.R. has since developed into a loving boy and has developed a brotherly bond with G.B. P.R. takes his role of big brother very seriously and is protective of both G.B. and T.B.

{¶32} Although too young to express their wishes, the guardian ad litem's report clearly indicates that the children are secure in their placement with their foster family. G.B. and P.R. appear to be flourishing within the care of their foster family, and P.R. has even begun to lose his fear that someone will come and take away the family's car and house. For T.B., the foster family is the only family he has ever known.

{¶33} The record also demonstrates that the children are in need of legally secure permanent placement and that such placement cannot occur without the grant of permanent custody. The court heard testimony about Brenda and Travis' inability to maintain stable housing and employment. In less than two years, each parent moved a minimum of six different times from one housing location to another, at times living together and at times living apart. There were instances when the couple was unable to establish a residence, and they relied on the compassion of friends and family to provide them with a place to stay.

{¶34} The court also heard testimony indicating that neither parent could provide financial stability for the children as both Brenda and Travis failed to maintain steady

employment for any significant period of time. Brenda voluntarily quit her job with McDonalds and then remained unemployed for nearly two years. Travis also failed to find steady employment, and as of the permanency hearing, had been unemployed since November 2010.

{¶35} Accordingly, after reviewing the record, we find sufficient credible evidence to support the juvenile court's determination that granting FCDJFS permanent custody of P.R., G.B., and T.B. is in the children's best interest. Brenda and Travis' assignments of error are overruled.

{¶36} Judgment affirmed.

RINGLAND and PIPER, JJ., concur