

[Cite as *In re Parrott*, 2001-Ohio-4049.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of:	:	
Carl E. Parrott, Jr.,	:	No. 01AP-135
Dependent Minor Child,	:	
(Mother, Angela Ely,	:	(REGULAR CALENDAR)
Appellant).	:	

D E C I S I O N

Rendered on November 27, 2001

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*,
for appellee State of Ohio.

Yeura R. Venters, Public Defender, and *David L. Strait*,
Guardian *ad litem*.

Phillip D. Cameron, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

BROWN, J.

Angela Ely, appellant, appeals a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, finding her son, Carl E. Parrott, Jr., to be a dependent minor.

Carl was born on April 25, 2000. Soon after Carl's birth, Franklin County Children Services ("FCCS") was contacted regarding Carl's living conditions. FCCS investigated and then removed Carl from the home. On August 3, 2000, FCCS filed a complaint alleging Carl was neglected, pursuant to R.C. 2151.03, and dependent, pursuant to R.C. 2151.04. A trial was held before a magistrate on September 18, 2000. On October 4, 2000, the magistrate filed a decision recommending the neglect charge be dismissed but that Carl be found dependent. On October 5, 2000, appellant filed objections and moved the court to admit the report of the court investigator, Felicia Taylor, which the trial court granted.

On December 11, 2000, the trial court held an objections hearing, but the matter was continued until a representative from the Ohio Youth Advocate Program could investigate the home of appellant's father for possible temporary placement. On December 21, 2000, the trial court overruled appellant's objection as it pertained to the dependency determination and concluded appellant's father was not an appropriate caregiver. The court ordered a temporary commitment of custody ("TCC") to FCCS. Appellant asserts the following assignments of error:

1. The trial court erred in sustaining the complaint of Franklin County Childrens [sic] Services, hereinafter referred to as

FCCS, alleging dependency motion [sic] and granting a temporary custody commitment of FCCS.

2. The trial court erred in sustaining the FCCS complaint and not finding a suitable family member for temporary custody of the child.

3. The trial court erred in admitting new evidence and making a decision based on the new evidence without allowing the said evidence to be given to the mother's attorney and without making a record of said evidence for review by an appellate court.

Appellant argues in her first assignment of error the trial court erred in sustaining the complaint of FCCS alleging dependency and granting TCC. Appellant basically asserts the dependency finding was against the manifest weight of the evidence. In deciding whether an adjudication of dependency is against the manifest weight of the evidence, "[t]he standard of review is whether sufficient, credible evidence exists to support the trial court's adjudication." *In re Pieper Children* (1993), 85 Ohio App.3d 318, 327. "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Id.*, quoting *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus. Thus, this court, reviewing the entire record, must weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the adjudication must be reversed and new trial ordered. See *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

R.C. 2151.04(C) defines a dependent child as one:

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship[.]

The state must prove by clear and convincing evidence that a child is dependent. See Juv.R. 29(E)(4) and R.C. 2151.35(A). Clear and convincing evidence is that which "produce[s] in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re Pieper Children, supra*, 326 quoting, *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368.

The magistrate heard testimony from numerous witnesses at the dependency hearing. Appellant, approximately twenty years old at the time, testified that she visited Carl two hours per day, three days per week. She denied the allegations in the dependency complaint that she would not change Carl's diaper, bathe him, or change his clothes at the hospital. However, she said because of some medical problems, she is now prohibited from lifting over five pounds. Appellant stated that before Carl was born, she helped take care of her sister's baby. She claimed she had been appropriately feeding Carl, and that in the two weeks she cared for him after he was born, he gained ten pounds. She also denied the allegations in the dependency complaint that her house was dirty and smelled, there was dog hair on the stairs, and ant traps everywhere. Appellant testified she would never hurt Carl and has taken two parenting programs. She had been unemployed for the year prior to the hearing.

Jennifer Reed, an intake worker for FCCS, testified she went with Laura Barnard, another intake worker, to appellant's home. She stated the home smelled like "poor hygiene," and there were ant traps in the stairway. She also stated Carl's father told her he had been cleaning the house, but it was not very clean, and everything that had been on the floor had just been moved onto the kitchen table. On a second occasion when she went to the home with Barnard, Reed stated that while Barnard retrieved the baby, she stood in the doorway and noticed a strong odor in the home, and the home was dusty and dirty.

Tonya Scott, another worker for FCCS, testified that she also went to appellant's home with Barnard. She stated she remembered walking up some steps and through a hung sheet, where they talked to appellant and Carl's father in the kitchen. The kitchen was dirty, and there were dishes all around the sink. The floor was dirty and the house was closed with little ventilation. She testified that she "smelled dog – animals."

Kacy Rudd, a treatment coordinator with the Ohio Youth Advocate Program, testified that she supervised two or three entire visits between appellant and Carl and briefly observed eight or ten more visits. She stated that during the visits, the child would remain either in the car seat or in his father's arms. Appellant would hold Carl for only a few minutes, and then she would put him back in the car seat. She also testified that during the longer visits, she never saw appellant feed Carl or change his diapers. Rudd stated she had tried to refer appellant to a community support program for assessment, but appellant rejected those services, stating she was doing so on the

advice of her attorney. Rudd stated that she had concerns that included a lack of bonding, holding, and nurturing between appellant and Carl.

Terry Ely, appellant's father, testified that appellant tried to take good care of Carl and was careful and loving. He stated he has seen appellant hold Carl often, and that she could take care of Carl herself. He also said appellant had helped care for her sister's baby. Appellant's sister, Crystal Hilton, also testified that she had trusted appellant to babysit her baby before Carl was born. Hilton stated she knew of no reason why appellant should not have custody of Carl. Lisa Huff, appellant's half-sister, also testified that appellant is a very attentive and loving mother, and that she saw no reason why appellant should not have custody of Carl.

While we do not agree with the trial court's statement that there was "overwhelming evidence" to support the magistrate's decision on dependency, we do believe there was sufficient, credible evidence to support the trial court's adjudication. Reed testified the home smelled like "poor hygiene," was not clean, was dusty and dirty, and ant traps were in the stairway. Scott testified the kitchen and floor were dirty, there were dishes all around the sink, and the house "smelled [like] dog – animals." Rudd stated appellant held Carl very little, she never saw appellant feed Carl or change his diaper, and she noticed a lack of bonding, holding, and nurturing between appellant and Carl.

Further, although appellant's witnesses testified they saw no problem with appellant's parenting skills, their testimony was vague and non-specific. Also, despite

appellant's denial of the accusations and characterizations by FCCS and its witnesses, the magistrate was in the best position to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony. See *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. The record also contains the Family Risk Assessment Model forms filed with the court, which indicate Carl had fecal matter encrusted in his legs, was dirty, had an odor about him, and had an infected umbilical cord when he was removed from appellant's care. We further note that although Carl was taken from the home only two weeks after his birth, as the trial court noted, the law does not require a court to sit idly by and experiment with a child's welfare. See *In re Bishop* (1987), 36 Ohio App.3d 123, 126, and *In re East* (1972), 32 Ohio Misc. 65, 69. Based upon the evidence presented at the hearing before the magistrate and the trial court, we find there was sufficient competent, credible evidence to establish by clear and convincing evidence that Carl's condition and environment was such as to warrant the state, in the interests of Carl, to assume his guardianship. Appellant's first assignment of error is overruled.

Appellant argues in her second assignment of error that even if the trial court properly found dependency, it erred in not finding a suitable family member, specifically her father, for temporary custody of Carl. At the hearing before the magistrate, appellant admitted she would never leave Carl alone with her father for any period of time because she does not trust him. She also admitted her father once said he would kidnap Carl, and she feared he might take Carl and leave. When questioned by her own

attorney, she stated she was not afraid of her father and lived with him, and she saw no problem with she and Carl living with him. Appellant also testified that when she was eighteen years old, her father thought she gave one of his guns to her ex-boyfriend. He dragged her out of her friend's house, threw her down the steps and against a car. However, she stated he apologized and she forgave him. Mr. Ely testified that his house has four bedrooms, two bathrooms, a finished basement, and a double living room, and appellant and Carl could live with him. Further, at the December 21, 2000 hearing, the trial court apparently heard an oral report on this issue from Rudd and reviewed Records of Activity ("ROA") and "supplemental information" from FCCS. We have no record of that oral report or the other evidence submitted and, therefore, cannot review it. However, based upon a review of the evidence before this court, we find the trial court properly found Mr. Ely was not a suitable temporary caregiver for Carl, as appellant testified there is conflict between she and her father, including physical violence, that she did not trust him, and she thought he may kidnap Carl. Thus, appellant's second assignment of error is overruled.

Appellant argues in her third assignment of error the trial court erred in admitting the oral report from Rudd, the ROA's, and "supplemental information" from FCCS because the court failed to allow her counsel to review the evidence before the hearing. We disagree. Initially, in order to reverse a judgment based upon the existence of error, the complaining party must demonstrate the error was materially prejudicial. *Fada v. Information Sys. & Networks Corp.* (1994), 98 Ohio App.3d 785. Appellant fails to

demonstrate, or even allege, prejudice. Further, although appellant's counsel stated at the close of the hearing that he wanted to place on the record that he never was provided this information, he did not at anytime object to the admission or use of the material during the course of the hearing. Where an appellant's counsel fails to object to the use of certain evidence, all but plain error is waived. *State v. Jones* (2001), 91 Ohio St.3d 335. There was no plain error in the present case. It is clear from the record that Rudd was present at the hearing and was available for either testimony or, at a minimum, for consultation with appellant's attorney. The record also discloses no effort on counsel's behalf to obtain such information at any time from either the court, FCCS, or Rudd. Finally, even if appellant would have been provided with such information, appellant does not indicate what actions she could or would have taken to refute the report and does not demonstrate, or even allege, the outcome of the case would have been any different. Therefore, we find this argument without merit and overrule appellant's third assignment of error.

Accordingly, we find the trial court did not err in finding Carl to be a dependent minor. Appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

BOWMAN and PETREE, JJ., concur.
