

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of: :
J.C., : No. 09AP-1112
(R.D., : (C.P.C. No. 06JU-10844)
Appellant). : (REGULAR CALENDAR)

In the Matter of: :
C.C. et al., : No. 09AP-1113
(R.D., : (C.P.C. No. 06JU-10843)
Appellant). : (REGULAR CALENDAR)

In the Matter of: :
R.C. et al., : No. 09AP-1114
(R.D., : (C.P.C. No. 06JU-10842)
Appellant). : (REGULAR CALENDAR)

D E C I S I O N

Rendered on June 1, 2010

Robert J. McClaren, for appellee.

John J. Peden, for appellant.

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

SADLER, J.

{¶1} Appellant, R.D., filed these consolidated appeals seeking reversal of a judgment by the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court granted motions filed by appellee, Franklin County Children Services ("FCCS" or "appellee"), seeking permanent court commitment ("PCC") of R.D.'s children, R.C., Ca.C., Co.C., and J.C. (collectively "the children"), thereby terminating her parental rights with respect to the children.

{¶2} The following facts are relevant to this appeal. R.D. is the children's mother, and C.C. is the children's father. On July 12, 2006, the trial court issued an order granting FCCS temporary custody of the children. This order was issued after FCCS filed complaints seeking findings of abuse, neglect, and dependency for each of the children after J.C. was born with cocaine in his system. At the time of J.C.'s birth, appellant tested positive for cocaine and marijuana. On August 9, 2006, the trial court found R.C. to be a dependent child; Ca.C. and Co.C. to be neglected and dependent children; and J.C. to be an abused, neglected, and dependent child.

{¶3} Case plans were prepared in each case for the purpose of identifying services needed to rehabilitate the parents to ensure that they could meet the custodial needs of the children, with the ultimate goal being to reunify the children with their parents. During part of the temporary custody, the children were placed with their paternal grandmother, Donna Jenkins ("Ms. Jenkins"). However, the placement ended after Ms. Jenkins allowed unsupervised contact between the children and their parents, a violation of the safety plan formulated for the children.

{¶4} On May 22, 2008, FCCS filed a motion seeking PCC after FCCS concluded that the children could not be placed with either parent. While the motion was pending, Ms. Jenkins filed a motion seeking to have custody of the children given to her.

{¶5} On September 22, 2009, the trial court held a hearing on the PCC motion. At the hearing, testimony was offered regarding each of the parents' compliance with the case plans. The assigned FCCS case worker, Craig Fitzgerald, testified that the plan called for R.D. to: (1) complete parenting classes; (2) provide proof of stable housing and income; (3) participate in family and individual counseling; (4) participate in a psychological evaluation and follow any recommendations resulting from that evaluation; (5) complete an AOD assessment and follow any recommendations resulting from that assessment, which included periodic urine screens for drug use; and (6) attend visits and medical appointments with the children.

{¶6} Fitzgerald testified that R.D. completed some, but not all, of the provisions of the plan during the 38 months of temporary custody. R.D. completed an outpatient drug treatment plan, but suffered a relapse after that. R.D. stopped providing urine screens, such that by the time of the hearing, she had completed 86 of a requested 329 urine screens, with none completed in the year prior to trial. Fitzgerald further testified that R.D. had not provided proof of stable housing or income, and that R.D. had complied with the requirement that she attend individual counseling, but that she had not complied with all of the recommendations resulting from that counseling. Fitzgerald also testified that R.D. had been convicted of trafficking in cocaine in 2008.

{¶7} At the hearing, R.D. testified about her attempts to comply with the plan, and her drug relapse. R.D. stated that she had contacted Maryhaven about participating

in a drug program there, but that she was not supposed to start the program until some time the following month. When asked about custody of the children, R.D. testified as follows:

Q. Right. Okay. Are you asking for the children to be returned to you?

A. I'm asking for my children to return to their grandmother.

Q. So you're not asking for the children to be returned to you?

A. No. I'm asking for them to be returned to Donna Jenkins.

Q. What if they do not go to Donna Jenkins would you ask for them to be returned to you?

A. Yeah.

Q. Do you believe that you are prepared at this point to take custody of them?

A. Are you asking me if I think I can take care of my kids?

Q. I'm asking you if you're prepared at this point to take custody of your children?

A. Yeah.

Q. Even though you've relapsed and not completed another drug treatment program?

A. I start my drug treatment in --- next month but for me to sit here and tell you that I don't want my kids, what type of person would I be?

Q. Well I'm not asking if you want them, I'm asking if you think you can take care of them right now?

A. That's why I'm asking for them to be placed with their grandmother.

Q. Because you don't believe that you can take care of them right now?

A. Yeah.

(Tr. 71-72.)

{¶8} Fitzgerald also testified about the case plan as it pertained to C.C., the children's father. Fitzgerald stated that at the time FCCS became involved with the children, C.C. was incarcerated for a probation violation. C.C. had been convicted in three separate cases between 2004 and 2008 on charges of receiving stolen property and breaking and entering. The case plan called for C.C. to: (1) participate in an AOD assessment and follow any recommendations resulting from that assessment, which included participation in periodic urine screens for drug use; (2) complete a parenting class; (3) participate in a psychological evaluation and follow any recommendations resulting from that evaluation; (4) participate in family counseling; (5) provide proof of stable housing and income; and (6) participate in visits with the children. Fitzgerald testified that C.C. had not fully completed any of the steps in the case plan, although he had partially completed some steps.

{¶9} At the hearing, C.C. testified about the attempts he had made to comply with the case plan. C.C. testified that if custody was not given to R.D., he believed he could take custody of the children. When asked what he hoped the result of the hearing would be, C.C. stated that, "I would like for my kids to go to my mother only because she's ready, she has everything set up, you know, she's prepared. I'm not prepared." (Tr. 115.)

{¶10} Also at hearing, testimony was offered regarding Ms. Jenkins' desire to take custody of the children. Ms. Jenkins testified that she had undergone drug treatment for cocaine use in 2003, and that at the time of the trial, she had two minor children that were

not in her custody, but were instead in the custody of their grandmother. Ms. Jenkins testified that custody was placed with her children's grandmother while she was in drug treatment, and that she had recently taken steps to have custody of her children restored to her, but that her children had decided not to go through with the change because they did not wish to change schools.

{¶11} Ms. Jenkins further testified about the initial placement of the children with her, and their removal due to the violation of the safety plan by allowing R.D. and C.C. to have unsupervised access to the children. Ms. Jenkins testified that she made a number of attempts to make her home suitable for the children, and that FCCS had not approved those changes.

{¶12} Fitzgerald testified that FCCS performed two home studies to determine whether Ms. Jenkins' home could be a suitable placement for the children. The first home study concluded that placement should be denied because Ms. Jenkins was at that time living in an apartment that was not up to code. The second home study also resulted in a denial of placement because the house Ms. Jenkins was living in at that time had structural problems. Fitzgerald testified that a third home study was not conducted because Fitzgerald discovered that Ms. Jenkins had lost custody of her two minor children due to her substance abuse problem. Fitzgerald felt that Ms. Jenkins had not been honest with him in discussing her drug problem initially, having first told him that the substance abuse problem was entirely her ex-husband's.

{¶13} After the hearing, the court issued a judgment entry. In the entry, the trial court concluded that FCCS had met the requirements for filing a motion seeking PCC as set forth in R.C. 2151.413(D)(1), since the children had been in the custody of FCCS for

12 months or more out of a consecutive 22-month period. The court then set forth its analysis on whether PCC would be in the best interests of the children, including analysis of the factors set forth in R.C. 2151.414(D)(1)(a) through (e). The court concluded that FCCS had demonstrated, by clear and convincing evidence, that it was in the children's best interests that PCC be granted, and that permanent custody should be given to FCCS.

{¶14} R.D. filed this appeal, and asserts three assignments of error:

Assignment of Error I

The Trial Court Did Not Rule On Paternal Grandmother's Motion For Legal Custody Of The Four (4) Minor Children Of This Action.

Assignment of Error II

The Trial Court Erred When It Did Not Consider the Requirements Of Ohio Revised Code 2151.414(D)(1)(2) (sic) Which requires A Determination Of The Children's Interaction With Parents, Siblings, Relatives, Foster Care Givers and Out Of House Providers, Or Any Other Person Who May Sufficiently Affect The Child. This Requirement Is Used In Determining The Best Interest of The Minor Children.

Assignment of Error III

The Trial Court Ruled Against The Manifest Weight Of The Evidence Because It Only Applied The Standard Of Clear And Convincing Evidence, Whereas The Appealable Standard To Be Applied To Paternal Grandparent Motion For Custody Would Have Been The Standard Of Preponderance Of The Evidence.

{¶15} In her first assignment of error, appellant argues that the trial court erred when it failed to rule on Ms. Jenkins' motion seeking to have custody of the children granted to her. Initially, we note that R.D.'s first assignment of error actually constitutes

an assertion of error on Ms. Jenkins' behalf, and she lacks standing to assert rights belonging to Ms. Jenkins. See *In re J.B.*, 10th Dist. No. 08AP-1108, 2009-Ohio-3083. "An appellant cannot raise issues on another's behalf, especially when that party could have appealed." *In re D.T.*, 10th Dist. No. 07AP-853, ¶8, 2008-Ohio-2287; see also *Hanna v. Hanna*, 177 Ohio App.3d 233, 2008-Ohio-3523.

{¶16} Furthermore, even if appellant could properly assert this error on Ms. Jenkins' behalf, we find the assignment has no merit. Appellant argues that the trial court's failure to rule on Ms. Jenkins' motion for custody means that there is no final appealable order in this case, because Ms. Jenkins' motion for custody constitutes a claim on which the trial court has not entered judgment.

{¶17} R.C. 2151.353(A)(3) allows a court considering disposition of a child who has been adjudicated as an abused, neglected, or dependent child to award custody of the child "to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings." However, a trial court is not required to consider placement with a relative before granting PCC. *In re Zorns*, 10th Dist. No. 02AP-1297, 2003-Ohio-5664. When a trial court enters judgment in an action without ruling on a motion, that motion is considered to have been implicitly denied. *Vahdati'bana v. Scott R. Roberts & Assoc., Co., LPA*, 10th Dist. No. 07AP-581, 2008-Ohio-1219. Thus, the trial court's failure to rule on Ms. Jenkins' motion for custody cannot, by itself, constitute reversible error.

{¶18} Accordingly, appellant's first assignment of error is overruled.

{¶19} In her second assignment of error, appellant argues that the trial court failed to consider all of the factors for determining the best interests of the children set forth in R.C. 2151.414(D)(1)(a) through (e). In her brief, appellant appears to argue that the trial court failed to consider the factor set forth in R.C. 2151.414(D)(1)(a), which requires the court to consider "[t]he 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" since the brief refers to the evidence of the children's interaction with each other and with Ms. Jenkins. However, in its entry in the case, the trial court specifically stated that it did consider each of the factors enumerated in R.C. 2151.414(D)(1), and in its analysis of R.C. 2151.414(D)(1)(a), the trial court found that the children were bonded with each other, and with Ms. Jenkins.

{¶20} Since the trial court specifically addressed each of the factors set forth in R.C. 2151.414(D)(1)(a) through (e), appellant's second assignment of error is overruled.

{¶21} In her third assignment of error, appellant argues that the trial court's conclusion that custody would not be placed with Ms. Jenkins is against the manifest weight of the evidence, since the trial court's ruling stated it was based on the standard of clear and convincing evidence, rather than a preponderance of the evidence. As with appellant's first assignment of error, this assignment is actually an assertion of error on Ms. Jenkins' behalf, and appellant therefore lacks standing to assert that error.

{¶22} Furthermore, even if appellant could properly assert this error on Ms. Jenkins' behalf, we find the assignment has no merit. In determining that the motion for PCC should be granted, the trial court stated in its entry that it had applied the standard of evidence applicable to a PCC motion, which is that of clear and convincing evidence.

{¶23} As for the court's decision not to grant custody to Ms. Jenkins, we review a trial court's decision whether to place a child with a relative for an abuse of discretion. *In re Patterson* (1999), 134 Ohio App.3d 119. An abuse of discretion is more than an error of law or judgment, but implies that the court's attitude is unreasonable, arbitrary, or capricious. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. Given the evidence that temporary placement of the children with Ms. Jenkins failed, and given the evidence that Ms. Jenkins lost custody of her own children, we cannot say that the trial court abused its discretion when it declined to give custody of the children to her.

{¶24} Accordingly, appellant's third assignment of error is overruled.

{¶25} Having overruled appellant's three assignments of error, we affirm the judgment by the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

TYACK, P.J., and McGRATH, J., concur.
