

[Cite as *In re Malone*, 2004-Ohio-533.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
CRAWFORD COUNTY**

IN THE MATTER OF:

CASE NUMBER 3-03-25

**REBECCA ANN MALONE
ADJUDGED DEPENDENT
CHILD**

OPINION

(KELLY MCCLURE, MOTHER-APPELLANT)

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Juvenile Division.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 9, 2004

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SHAW, P.J.

{¶1} This is an appeal from the judgment of the Crawford County Juvenile Court which granted Crawford County Children Services Board (“CCSB”) permanent custody of Rebecca Ann Malone.

{¶2} In December of 2001, Kelly McClure (“McClure”) was residing with her daughter Rebecca, age three, and Rebecca’s father, Jeff Mayer. On December 27, 2001, CCSB came to McClure’s residence in response to a complaint alleging that Mayer sexually abused another child in the home. Upon entering McClure’s home, CCSB found unsanitary conditions and no central heat. Consequently, McClure was instructed to remedy these problems. On December 28, 2001, CCSB returned to McClure’s home to find the conditions unchanged. Thereafter, Rebecca was placed in the temporary custody of CCSB. On January 28, 2002 a case plan was filed, which addressed personal hygiene issues, money managing, home cleanliness, and McClure’s ability to protect Rebecca.

{¶3} On December 17, 2002, CCSB filed for permanent custody asserting that McClure had failed to remedy the conditions which led to Rebecca’s removal from the home, that McClure had demonstrated a lack of commitment to Rebecca and had shown an unwillingness to provide an adequate permanent home for

Rebecca when she failed to visit Rebecca for the month of October 2002 and remained unemployed with no independent housing.

{¶4} On April 4, 2003, a hearing was held on the matter. Mayer, Rebecca's biological father stipulated that permanent custody should be granted to CCSB. Rebecca's case worker, Traci Mason, testified in support of CCSB's motion. Mason testified that McClure initially gave CCSB an inaccurate address and failed to provide new addresses upon request on several occasions. Mason further testified that CCSB was only made aware of McClure's address between May, 2002, and July, 2002, and between January, 2003, and the hearing date.

{¶5} Mason testified that until a few weeks prior to the hearing, McClure came to visit Rebecca with dirty clothes, dirty hair and a foul odor and that Mason had discussed McClure's hygiene with her on numerous occasions. Mason also testified that McClure was referred to a homemaker to help her with house-cleaning and financial issues but that McClure was only home for two of nine visits attempted by the homemaker.

{¶6} Mason testified that as part of the case plan, McClure was directed to attend parenting classes, a psychological evaluation and counseling but she failed to complete any of these tasks. Mason further testified that she reminded McClure several times to complete the psychological examination. McClure was also required to obtain and maintain a job for at least four of the six months following the filing of the case plan. Mason testified that she sent McClure classified ads listing available employment and offered to provide the ads on a regular basis, but,

McClure did not request any additional classified ads and failed to provide any proof to CCSB that she had ever been employed.

{¶7} Mason further testified that out of sixty-seven scheduled visits with Rebecca, McClure failed to attend twenty-seven visits and that McClure attended only one visit between the third week of September, 2002, and the third week of November, 2002. At many of the visits which McClure attended, there was little interaction between McClure and Rebecca. Furthermore, Rebecca would often control these visits and leave the visitation room saying she was “done with the visit.” Additionally, of the visits missed, most were as a result of McClure contracting head lice. However, Mason advised McClure to get a head check at the health department so that she could resume visits with Rebecca. Mason testified that with treatment, lice usually take approximately three days to cure.

{¶8} Mason also testified that McClure is in a relationship with Doug Mann, a registered sex offender with whom McClure recently had a child. Mason also testified that McClure had previously lived with Mann and at the time of the hearing, was living in Mann’s parent’s home while Mann was in jail. Mason testified that CCSB did not have any objections as to the physical conditions of the Mann home.

{¶9} Next, Dennis Mann, Doug Mann’s step-father, testified that McClure was paying him rent in the amount of \$200.00 per month from money given to her by the Department of Human Services. He also testified that McClure assists in household chores and could continue living with the Manns indefinitely. Finally,

Mann testified that McClure and his son care a lot for each other and have communicated since Doug had been in jail.

{¶10} McClure also testified at the hearing. She testified that she missed some of her counseling sessions because of prenatal doctor's appointments and that she missed the other ones because she did not have transportation. She further admitted that she did not attend any of the four scheduled psychological evaluations.

{¶11} McClure also testified that she is currently paid \$330 per month with an Ohio Works First Check which is contingent upon finding gainful employment or taking GED classes. McClure testified that she had attempted to use the transportation provided by Council for the Aging to attend GED classes but her GED classes ran later in the evening than the transportation service. Additionally, McClure also claimed that her doctor told her not to work towards the end of her pregnancy and that while she attempted to find employment, no one would hire her.

{¶12} McClure also testified that she missed visits with Rebecca because she had the flu, her other daughter had the flu, McClure had head lice and because McClure had an interview. McClure acknowledged that Mason had spoken to her at visits regarding hygiene. However, McClure felt that the odor mentioned emanated from Doug Mann. McClure further testified that although she is living with the Mann family and she is unsure of her relationship with Doug, she is willing to keep Rebecca away from Doug.

{¶13} After considering the evidence, the trial court found by clear and convincing evidence that McClure had failed to substantially remedy the conditions causing the child to be placed outside the home and had demonstrated a lack of commitment toward the child as provided in R.C. 2151.414(E)(1) and (4) and that considering the factors established in R.C. 2152.414(D) that it would be in the best interests of the child to grant permanent custody to CCSB. McClure now appeals asserting two assignments of error which will be discussed together.

The trial court erred when it granted permanent custody to the Children's Services, as there was insufficient proof that the mother could not rectify her problems within a reasonable time, and that Children's services had not made a good faith effort to assist the mother.

The trial court erred in its consideration of mother's association with individuals who were criminally charged with sexual crimes.

{¶14} McClure maintains that the trial court erred in granting permanent custody to CCSB because there was insufficient proof that McClure could not rectify her problems within a reasonable time and that CCSB did not make a good faith effort to assist McClure. Specifically, McClure contends that because she now lives with the Manns she can complete the case plan.

{¶15} Once a child has been placed in the temporary custody of a children's services agency, the agency is required to prepare and maintain a case plan for that child. R.C. 2151.412(A)(2). Further, R.C. 2151.412(E)(1) states that "[a]ll parties, including the parents * * * are bound by the terms of the journalized case plan." One of the enumerated goals of a case plan for a child in the temporary

custody of a children's services agency is "[t]o eliminate with all due speed the need for the out-of-home placement so that the child can safely return home." R.C. 2151.412(F)(1)(b). This goal is commonly referred to as reunification.

{¶16} However, once an agency files a motion for permanent custody, the Revised Code requires that the trial court determine, by clear and convincing evidence, that a grant of permanent custody to the agency that has so moved is in the best interest of the child *and* that one of four enumerated factors applies. R.C. 2151.414(B)(1). Included in this list is that

[t]he child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

R.C. 2151.414(B)(1)(a).

{¶17} In determining whether the child cannot be placed with either parent within a reasonable time or should not be placed with the parents, the Revised Code requires that the court "consider all relevant evidence." R.C. 2151.414(E). This statute further states that "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[.]" if it finds by clear and convincing evidence that one or more of sixteen enumerated exists. R.C. 2151.414(E), including in relevant part,

1) Following 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. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

* * *

(4) The 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;

{¶18} The Supreme Court of Ohio has held that "[c]lear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and *unequivocal*." *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, citing *Merrick v. Ditzler* (1915), 91 Ohio St. 256. In addition, when "the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross*, *supra* (citations omitted). Thus, we are required to determine whether the evidence was sufficient for the trial court to make its findings by a clear and convincing degree of proof.

{¶19} In the case sub judice, the trial court found that permanent custody of Rebecca to CCSB was in the best interests of the child and that the factors listed in Revised Code Section 2151.414(E)(1) and (4) have been proven by clear and convincing evidence to exist.

{¶20} McClure argues that her poverty, prior lack of a permanent home, failure to attain a job, and her association with Doug Mann should not be used as reasons to grant permanent custody to CCSB. The trial court in its detailed entry addressed each of these concerns when it listed its reasons for granting permanent custody to CCSB which are supported by the facts as stated above. Furthermore, CCSB provided McClure with substantial help and guidance to complete the requirements of the case plan. While McClure seems to have numerous excuses for her failure to resolve any of the problems outlined in the case plan between January 2002 and December 2002, the fact remains that McClure was given nearly one year to find an adequate permanent home for Rebecca which she was unable to do.

{¶21} While McClure is currently living at a home which is clean and structurally sound, we cannot find that the trial court erred in having reservations regarding McClure's future stability as a resident in the Mann household based on the ongoing relationship between McClure and Doug Mann and the fact that Mann's family has no biological relationship with Rebecca. Furthermore, the evidence reflects that McClure moved continuously throughout the year and only moved in with the Manns *after* the motion for permanent custody was filed. In

fact, McClure admitted that between January 2002 and December 17, 2002, she had not improved her home-conditions as required by the case-plan.

{¶22} Moreover, while McClure argues that her relationship with a convicted sex offender should not be used against her in this proceeding, we cannot find that the trial court erred in considering this factor when deciding whether McClure can adequately protect Rebecca particularly when McClure has a history of associating with sex offenders.

{¶23} Based on the foregoing, we cannot find that the trial court erred when it found by clear and convincing evidence that the factors listed in Revised Code Section 2151.414(E)(1) and (4) exist to support a finding that “the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.” Consequently, McClure’s first and second assignments of error are overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

CUPP and BRYANT, JJ., concur.