

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

TOBIAS GROSSI

MINOR CHILD

: JUDGES:
: Hon. John F. Boggins, P.J.
: Hon. W. Scott Gwin, J.
: Hon. Sheila G. Farmer, J.
:
:
: Case No. 2004CA00348
:
: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Juvenile Court Division, Case No.
JU126358

JUDGMENT:

Reversed

DATE OF JUDGMENT ENTRY:

May 23, 2005

APPEARANCES:

For Appellant

ALLYSON J. BLAKE
200 West Tuscarawas Street
Suite 200
Canton, OH 44702

For Appellee

JERRY A. COLEMAN
221 Third Street, SE
Canton, OH 44702

Farmer, J.

{¶1} On March 13, 2003, appellee, the Stark County Department of Job and Family Services, filed a complaint for temporary custody of Tobias Grossi born March 10, 2003, alleging the child to be neglected and dependent. Mother of the child is appellant, Julieanne Grossi; alleged father is John Jefferson Wilson, II. An adjudicatory hearing was held on May 30, 2003. The trial court found the child to be dependent and awarded temporary custody of the child to appellee.

{¶2} On February 2, 2004, appellee filed a motion for permanent custody. A hearing was held on September 9, and October 12, 2004. By judgment entry filed October 18, 2004, the trial court granted appellee permanent custody of the child. Findings of fact and conclusions of law were filed same date.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT THIS CHILD HAD BEEN IN THE TEMPORARY CUSTODY OF SCDJFS FOR TWELVE OF THE PRIOR TWENTY-TWO MONTHS"

II

{¶5} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO REQUIRE THE GUARDIAN AD LITEM TO FAITHFULLY DISCHARGE HER DUTIES PURSUANT TO STARK COUNTY COMMON PLEAS FAMILY COURT DIVISION LOCAL RULES AND OHIO REVISED CODE SECTION 2151.281."

I

{¶6} Appellant claims the trial court erred in finding the child had been in the appellee's temporary custody for twelve of the prior twenty-two months.

{¶7} Appellee filed its motion for permanent custody some eight months after the adjudication of the child, and the date of sixty days after it received temporary custody of the child. Appellant argues appellee did not have temporary custody of the child for twelve of the prior twenty-two months pursuant to R.C. 2151.414(B)(1)(d). Based upon the authority of the Supreme Court of Ohio in *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, this court agrees. Although the *C.W.* decision was filed on December 8, 2004, after the trial court's decision on October 18, 2004, we find it was decided while this case was pending before this court and therefore is applicable *sub judice*

{¶8} Assignment of Error I is granted.

II

{¶9} Based upon our decision in Assignment of Error I, this assignment is moot.

{¶10} The judgment of the Court of Common Pleas of Stark County, Ohio, Juvenile Court Division is hereby reversed.

By Farmer, J.

Boggins, P.J. and

Gwin, J. concur.

JUDGES

SGF/db 0516

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

| | | |
|-------------------|---|----------------------|
| IN THE MATTER OF: | : | |
| | : | JUDGMENT ENTRY |
| TOBIAS GROSSI | : | |
| | : | |
| MINOR CHILD | : | CASE NO. 2004CA00348 |

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Stark County, Ohio, Juvenile Court Division is reversed.

JUDGES