[Cite as *In re K.A.*, 2009-Ohio-2499.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

KAYLEE ALLEN
ANNA ALLEN
JARROD RAVER

JUDGES:
Hon. Sheila G. Farmer, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case Nos. 2008CA00067
2008CA00068
2008CA00069
2008CA00070

O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Juvenile Division, Case Nos. 2008-AB-177, 2008-AB-178 & 2008-AB-179

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: May 22, 2009

APPEARANCES:

For Aleasia Stepp

CHRISTINA A. MCGILL
309 East Main Street
Lancaster, OH 43130

For Jarrod Raver

AARON CONRAD
144 East Main Street
P.O. Box 667
Lancaster, OH 43130

For Fairfield Cty. Child Protective Services

JULIE S. BLAISDELL
201 South Broad Street
Suite 400
Lancaster, OH 43130

Guardian ad Litem

JESSICA MONGOLD
123 South Broad Street
Suite 230
Lancaster, OH 43130

Farmer, P.J.

{¶1} On August 13, 2008, appellee, Fairfield County Child Protective Services, filed three complaints involving three children, K.A. born March 27, 2001 (Case No. 2008-AB-177, A.A. born August 19, 2005 (Case No. 2008-AB-178, and J.R. born August 5, 2007 (Case No. 2008-AB-179. The complaints alleged each child was a dependent child warranting the state to assume guardianship of the children. The complaints sought protective supervision or temporary custody. Mother of the children is appellant, Aleasia Stepp; father of K.A. and A.A. is Brandon Allen; father of J.R. is appellant, Jarrod Raver, aka Jarrod Spangler.

{¶2} A case plan was filed on September 3, 2008. An adjudicatory hearing and dispositional hearing were held on September 30, 2008. By memorandum entry filed September 30, 2008 and entries filed October 16, 2008, the trial court found the children to be dependent and placed the children in appellee's temporary custody.

{¶3} Appellant-mother filed an appeal and assigned the following assignments of error:

I

{¶4} "THE JUVENILE COURT ERRED IN FINDING THAT THE MINOR CHILDREN WERE DEPENDENT CHILDREN AS DEFINED BY R.C. 2151.04(C)."

II

{¶5} "THE JUVENILE COURT ERRED AND ABUSED ITS DISCRETION BY ISSUING ITS DISPOSITIONAL ORDER GRANTING TEMPORARY CUSTODY OF THE MINOR CHILDREN TO FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES."

III

{¶6} "THE JUVENILE COURT ERRED IN FINDING THAT REASONABLE EFFORTS WERE MADE TO PREVENT THE NEED FOR PLACEMENT OF THE MINOR CHILDREN AND/OR TO MAKE IT POSSIBLE FOR THE CHILDREN TO RETURN HOME."

IV

{¶7} "THE JUVENILE COURT ERRED WHEN IT FAILED TO MAKE WRITTEN FINDINGS OF THE RELEVANT SERVICES PROVIDED BY THE AGENCY AS REQUIRED BY R.C. 2151.419(B)(1) AND R.C. 2151.353(H)."

{¶8} Appellant-father filed an appeal and assigned the following assignment of error:

I

{¶9} THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT J.R. WAS A DEPENDENT MINOR WHOSE CONDITION OR ENVIRONMENT WAS SUCH TO WARRANT THE STATE IN ASSUMING THE CHILD'S GUARDIANSHIP."

APPELLANT MOTHER'S I, II, III, IV AND APPELLANT FATHER'S I

{¶10} Both appellants claim the trial court erred in finding the children were dependent and it was in their best interest to be placed in appellee's temporary custody. Appellant-mother also claims the trial court erred in finding reasonable efforts were made and the trial court failed to make written findings of the relevant services provided by appellee.

{¶11} A dependency adjudication must be supported by clear and convincing evidence. Juv.R. 29(E)(4); R.C. 2151.35. Clear and convincing evidence is such evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the conclusion to be drawn. *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361. "Where 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 v. Ledford* (1954), 161 Ohio St. 469, 477.

{¶12} R.C. 2151.04(C) defines a "dependent child" as any child "[w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship."

{¶13} In its judgment entries filed October 16, 2008, the trial court found the following as to each child:

{¶14} "Based on the information presented to the Court and based on the information contained in the complaint, the Court found, by clear and convincing evidence, that *** is a dependent minor whose condition or environment is such as to warrant the state, in the interest of the child, in assuming the child's guardianship. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that *** is a dependent minor.

{¶15} "***

{¶16} "Based on the information presented to the Court and based on the information contained in the complaint, the Court found, by clear and convincing evidence, that it would be in the best interest of *** for her [him] to be placed in the temporary custody of Fairfield County Child Protective Services. The Court found that

all reasonable efforts were made to avoid the removal of this child from her [his] home, but it was not possible to do so. The Court further found that for the child to remain with either parent would be contrary to the welfare of the child, and therefore, her [his] removal would be in her [his] best interest. IT IS THEREFORE ORDERED, ADJUDGES, AND DECREED, that *** shall be placed in the temporary custody of Fairfield County Child Protective Services."

{¶17} The facts pertinent to the trial court's decisions are basically simple. Appellee became involved with the family after receiving a complaint that appellant-mother's home had "trash, beer cans lying on, all over the place and there wasn't any clear pathways." T. at 9. On July 17, 2008, an unannounced home visit by a caseworker, Maria Jones, revealed a home "to be clean and free of hazards." Id. At the time of this visit, appellant-father was incarcerated. Appellant-mother admitted to relapsing on cocaine approximately one month prior to the visit due to appellant-father "being in jail, having financial problems and trying to raise three children on her own." T. at 10.

{¶18} On August 17, 2008, Ms. Jones visited the home again. Appellant-father was home from jail. Id. Both appellants agreed to submit to drug screening. Id. Appellant-mother denied using cocaine, but tested positive for cocaine and benzodiazepines. Id. She admitted to abusing Percocets, and explained her positive drug test for cocaine was based on her making and touching crack in order to teach someone else how to put it in a spoon and melt it. Id. Appellant-mother also admitted to being addicted to Suboxone which she was buying "off the street" because she did not have a prescription for the drug. T. at 11, 26. Despite these admissions, appellant-

mother argued the children were safe and well-cared for by 24/7 daycare assistance. T. at 38, 98-100.

{¶19} Appellant-father tested positive for benzodiazepines, cocaine, and THC. T. at 11. He admitted to smoking THC and taking Percocets, but denied using cocaine. Id. Appellant-father explained the positive cocaine test was due to smoking marijuana out of a crack pipe. Id.

{¶20} On August 28, 2008, the case was transferred to caseworker, Stacey Bergstrom. T. at 12. In early September, Ms. Bergstrom prepared a case plan for appellants. T. at 32. The case plan included the following:

{¶21} "Um, some of the services on the case plan were Recovery Center, um, assessments and follow the recommendations, drug screening, to consider Family Court as an option, if they choose. Um, we wanted them to be able to maintain employment and maintain their housing, um, and we wanted them to use protective daycare." Id.

{¶22} Appellants have been able to maintain housing through HUD. Id. The home is "clean and appropriate." T. at 33. Appellant-father has obtained periodic employment with Lancaster Window and Glass and also works side jobs in the neighborhoods. Id. Appellant-mother is unemployed. T. at 34.

{¶23} Appellant-mother contacted the Recovery Center to reenter their program, but was referred to New Horizon due to mental health issues. T. at 35. She had been through a couple different counselors at the Recovery Center and had been discharged from the program due to non-compliance. Id. Appellant-father also contacted the Recovery Center, but at the time of the hearing, he was on a waiting list. Id. All of

appellants' drug screenings were negative except for one for appellant-mother on September 25, 2008. She tested positive for Suboxone, and she did not have a prescription for this drug. T. at 36.

{¶24} As for protective daycare, appellant-mother's sister, Velvet "Jo" Williams was the primary person in charge of overseeing the safety plan. T. at 38. Ms. Williams was responsible for finding appropriate supervisors while she was at work. Id. One of the assistants was appellant-father's sister, Becky Raver. Id. About a week and a half prior to the hearing, police were called to a domestic violence incident between appellant-father and Ms. Raver. Id. He accused Ms. Raver of associating with inappropriate individuals which led to a fight. T. at 38-39. Following this incident, Ms Bergstrom determined Ms. Raver was not a suitable daycare provider. T. at 40-41.

{¶25} Appellee's position and request for temporary custody as opposed to protective supervision was summarized by Ms. Bergstrom as follows:

{¶26} "A. Uh, there were a couple different things. The positive drug screens for Suboxone is a concern that she's still using Suboxone without a valid prescription. There's concern regarding, um, conversations that I had with Allie Carson at the Recovery Center that she was non-compliant with treatment, um, and there's concern regarding the situation about a week and a half ago when the police were called out with the DV and with the supervising person intoxicated.

{¶27} "***

{¶28} "A. I would like to look at family members who would be appropriate. Um, I've posed the question to Aleasia and Jarrod when I first got the case if for some reason we did get custody, where they would want the children to go or who they would

want the children with and Aleasia had told me that her sister Jo, um, she said that would be the best option." T. at 42.

{¶29} Although appellants argue there is no proof that any harm resulted from their drug addiction, there is clear and convincing evidence that any stability in the home was as a result of the daycare providers (appellants' relatives). That stability was effectuated by outside people 24/7 despite the fact that appellant-mother was unemployed and appellant-father had day time employment. T. at 33-34. Despite the intervention, drugs and addiction to drugs of abuse were still prevalent in the home.

{¶30} We concur with the trial court that the environment created by drugs and drug usage substantiated a dependency finding under R.C. 2151.04(C). Further, we concur the best interest of the children was to be placed in appellee's temporary custody to ensure ongoing treatment of the parents and ongoing care for the children.

{¶31} As for appellant-mother's arguments on reasonable efforts, she admitted that Ms. Jones tried to help her, and Family Court was discussed with her, but she was not interested because the Family Court "is drama." T. at 69, 83-85. Appellee implemented an out-of-home safety plan and then an in-home safety plan, but temporary custody was sought after the domestic violence incident regarding Ms. Raver, a daycare provider. T. at 11.

{¶32} A review of the trial court's October 16, 2008 entries establish the trial court made findings of the services provided by appellee in compliance with R.C. 2151.419(B)(1) and R.C. 2151.353(H). The trial court mentioned appellant-mother's rejection of Family Court, and discussed the safety plans implemented by appellee.

{¶33} Appellant-mother's assignments of error I, II, III, and IV are denied. Appellant-father's sole assignment of error is denied.

{¶34} The judgment of the Court of Common Pleas of Fairfield County, Ohio, Juvenile Division is hereby affirmed.

By Farmer, P.J.

Hoffman, J. and

Edwards, J. concur.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ Julie A. Edwards_____

JUDGES

SGF/sg 0325

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	JUDGMENT ENTRY
	:	
KAYLEE ALLEN	:	
ANNA ALLEN	:	CASE NOS. 2008CA00067
JARROD RAVER	:	2008CA00068
	:	2008CA00069
	:	2008CA00070

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, Juvenile Division is affirmed. Costs to be divided equally between appellant-mother and appellant-father.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ Julie A. Edwards_____

JUDGES