[Cite as *In re M.S.*, 2009-Ohio-3871.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	JUDGES: Hon. Sheila G. Farmer, P. J. Hon. William B. Hoffman, J. Hon. John W. Wise, J.
M. S. K. H.	Case No. 09 CA 13
MINOR CHILDREN	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Juvenile Division, Case Nos. F2007-0814 and A2007-0340
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 5, 2009

APPEARANCES:

For Appellee LCJFS	For Appellant Mother
ALICE BOND ASSISTANT PROSECUTOR 20 South Second Streeet, 4th Floor Newark, Ohio 43055	ROBIN LYN GREEN 33 West Main Street, Suite 103 Newark, Ohio 43055

Wise, J.

{¶1} Appellant Michelle Fries appeals the decision of the Licking County Court of Common Pleas, Juvenile Division, which granted permanent custody of her daughter to Appellee Licking County Department of Job and Family Services ("LCDJFS"), and ordered a planned permanent living arrangement for appellant's son. The relevant facts leading to this appeal are as follows.

{¶2} Appellant is the mother of K.H., a son, and M.S., a daughter. The children are half-siblings to each other.

{¶3} On July 20, 2007, in Licking County Juvenile Court case A2007-0340, K.H. entered an admission to a charge of delinquency by reason of domestic violence. On August 15, 2007, the court granted temporary custody of K.H. to LCDJFS. He was thereupon placed with an aunt and uncle.

{¶4} On October 19, 2007, in Licking County Juvenile Court case F2007-0814, LCDJFS filed a complaint alleging M.S., appellant's daughter, was a dependent child pursuant to statute. M.S. was subsequently found to be dependent, and temporary custody was maintained with the agency, with placement also with the aunt and uncle.

{¶5} On May 9, 2008, LCDJFS filed motions to modify disposition, seeking permanent custody as to M.S. and a planned permanent living arrangement ("PPLA") as to K.H.

{¶6} On July 2, 2008, the magistrate conducted an evidentiary hearing regarding the motions to modify disposition. On July 30, 2008, the magistrate issued a decision recommending permanent custody of M.S. to LCDJFS, and a planned permanent living arrangement regarding K.H.

{¶7} Appellant thereafter filed objections to the decision of the magistrate. On February 11, 2009, the trial court overruled the objections and adopted the decision of the magistrate.

{¶8} Appellant filed a notice of appeal on February 17, 2009. She herein raises the following sole Assignment of Error:

{¶9} "I. THE TRIAL COURT'S ENTRY GRANTING PERMANENT CUSTODY TO THE AGENCY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶10} In her sole Assignment of Error, appellant contends the trial court's grant of permanent custody and PPLA is against the manifest weight of the evidence. We disagree.

{¶11} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (Feb. 10, 1982), Stark App.No. CA-5758. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. Furthermore, it is well-established that the trial court is in the best position to determine the credibility of witnesses. See, e.g., *In re Brown*, Summit App.No. 21004, 2002-Ohio-3405, ¶ 9, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

Permanent Custody re: M.S.

{¶12} R.C. 2151.414(B)(1) reads as follows: "Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

{¶13} "(a) The child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies or private child placing 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.

{¶14} "(b) The child is abandoned.

{¶15} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶16} "(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999. * * *."

{¶17} In determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents (see R.C. 2151.414(B)(1)(a), supra), a trial court is to consider the existence of one or more factors under R.C. 2151.414(E), including whether or not "[f]ollowing 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." See R.C. 2151.414(E)(1).

{¶18} In the case sub judice, the record contains, inter alia, four volumes of transcripts pertaining to the adjudication and initial disposition phases (January 10, 11, and 15, 2008), as well as a fifth volume specifically focusing on permanent custody/PPLA (July 2, 2008). These transcripts are replete with evidence of appellant's mental health and anger management issues, difficulties in supervising the children and making daily household decisions, and lack of personal financial skills. In addition, from the initial agency involvement in this matter, appellant, who is unemployed and receiving social security payments, has had ongoing issues with maintaining fundamental hygiene standards in her residences. Various witnesses described significant amounts of unwashed dishes and utensils in the kitchen, extreme clutter, non-vacuumed pet hair, and areas of mildew, despite consistent attempts to assist appellant with these problems. It is noteworthy that appellant's own mother travelled from Florida to testify at one of the January hearings, opining that appellant's parenting skills were "extremely poor." Tr., January 11, 2008, at 156. Although nearly six months passed between the January and July 2008 hearings, yet by the latter date appellant had moved in with two other women and was sleeping in a basement, using a mattress on the floor near a frequently-overflowing shower drain. Appellant did not dispute that

the living facilities were not suitable for children; however, her ability to imminently obtain substitute appropriate housing is at best speculative. [1]

{¶19} Upon review, we find the trial court's conclusions, pursuant to R.C. 2151.414(B)(1), that appellant has failed continuously and repeatedly to substantially remedy the conditions causing M.S. to be placed outside the child's home and that M.S. cannot be placed with either parent within a reasonable period of time, were supported by the competent, credible evidence and do not constitute reversible error.

Planned Permanent Living Arrangement re: K.H.

{¶20} R.C. 2151.353(A)(5) addresses the determination of whether planned permanent living arrangements are appropriate:[2]

{¶21} "(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

{¶22} "***

{¶23} "(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

{¶24} "(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or

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[1] We further note that the father of M.S. is in agreement with a permanent custody disposition. See Magistrate's Decision at 8.

[2] Appellant's Assignment of Error does not mention PPLA; however, this issue forms part of her argument. We will thus address the subject of PPLA in the interest of justice.

institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

{¶25} "(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

{¶26} "(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living."

{¶27} As indicated in our analysis of M.S.'s case, supra, the record in this matter indicates that appellant's significant psychological issues and inadequate parenting skills have impacted K.H., who has demonstrated aggressive and unruly behavior while in her care. Nonetheless, the evidence indicated appellant and K.H. have maintained a strong bond. Accordingly, the trial court's findings under R.C. 2151.353(A)(5)(b), leading to a grant of PPLA, are supported by the record.

Best Interests re: M.S. and K.H.

{¶28} It is well-established that "[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *In re*

Mauzy Children (Nov. 13, 2000), Stark App.No. 2000CA00244, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316, 642 N.E.2d 424.

{¶29} In determining the best interest of a child for purposes of disposition, the trial court is required to consider the factors contained in R.C. 2151.414(D). These factors are as follows:

{¶30} "(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster care givers and out-of-home providers, and any other person who may significantly affect the child;

{¶31} "(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

{¶32} "(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

{¶33} "(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

{¶34} "(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶35} In addition to other evidence pertinent to best interests as set forth earlier in this opinion, the trial court in the case sub judice was presented with the opinion of guardian ad litem recommending permanent custody of M.S. to the agency and a grant of PPLA regarding K.H. The record indicates that M.S. is faring well in her current

placement with relatives, who have expressed a desire to adopt her. Tr., July 2, 2008 at 24-25. The record also demonstrates that K.H. requires a much more structured environment that appellant can provide, even though his ongoing bond with appellant presently militates against full permanent custody under the statute. Upon review of the record, we conclude the trial court's rulings concerning M.S. and K.H. were made in the consideration of their best interests and did not constitute an error or an abuse of discretion.

{¶36} Appellant's sole Assignment of Error is overruled.

{¶37} For the reasons stated in the foregoing opinion, the judgment of the Licking County Court of Common Pleas, Juvenile Division, is hereby affirmed.

By: Wise, J.

Farmer, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE

/S/ SHEILA G. FARMER

/S/ WILLIAM B. HOFFMAN

JUDGES

JWW/d 723

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

IN THE MATTER OF:	:	
	:	
M. S.	:	JUDGMENT ENTRY
	:	
K. H.	:	
	:	
MINOR CHILDREN	:	Case No. 09 CA 13

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, Licking County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES