[Cite as *In re J.S.*, 2009-Ohio-5099.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	JUDGES:
IN RE:	Hon. Sheila G. Farmer, P.J.
	Hon. William B. Hoffman, J.
J.S.	Hon. John W. Wise, J.
W.S.	
R.S.	Case No. 09 CA 25
Dependent Children	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Juvenile Division, Case Nos. F2008-39, F2008-40, and F2008-41
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 28, 2009

APPEARANCES:

For Appellant Father	For Appellee DJFS
J. MATTHEW DAWSON 35 South Park Place Suite 150 Newark, Ohio 43055	KENNETH W. OSWALT PROSECUTING ATTORNEY JAMES D. MILLER ASSISTANT PROSECUTOR 20 South Second Street, Fourth Floor Newark, Ohio 43055

Wise, J.

{¶1} Appellant Craig Norman appeals the decision of the Licking County Court of Common Pleas, Juvenile Division, which granted permanent custody of his daughter, as well as her two half-siblings, to Appellee Licking County Department of Job and Family Services ("LCDJFS"). The relevant facts leading to this appeal are as follows.

{¶2} Appellant is the father of R.S. (age 3). The mother of R.S. is Dana Sillin, who also has a daughter, J.S. (age 7), and a son, W.S. (age 5) by Richard Sillin, her estranged husband. Dana Sillin has filed a separate appeal in this matter.

{¶3} On November 1, 2007, LCDJFS filed a complaint in the Licking County Juvenile Court alleging J.S., W.S., and R.S. were dependent children pursuant to statute. The complaint was dismissed and refiled on January 14, 2008. At the time of the original complaint, appellant and Dana were living together as a couple, but they had recently been homeless. Dana had left the three children with Richard Sillin for several weeks in October 2007, even though she had a CPO against him for domestic violence. Dana was unemployed and had been denied public assistance; appellant was receiving social security disability. Among other things, the three children's hygiene condition was deplorable: they were filthy, severely infested with lice, underweight, and lacking properly fitted clothes and shoes. There had also been a police report that appellant's teenage son had sexually assaulted J.S.

{¶4} LCDJFS received temporary custody following shelter care proceedings. On February 15, 2008, LCDJFS presented an amended case plan, seeking permanent custody of the three children. On March 31 and April 1, 2008, the magistrate conducted an evidentiary hearing as to adjudication and disposition. At the conclusion of the

adjudicatory phase, the magistrate orally ruled that the children were found to be dependent. The dispositional phase then went forward.

{¶5} On September 4, 2008, the magistrate issued a written decision finding J.S., W.S., and R.S. to be dependent, and recommending permanent custody of all three children to LCDJFS.

{¶6} Appellant and Dana 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.

{¶7} Appellant filed a notice of appeal on March 9, 2009. He herein raises the following sole Assignment of Error:

{¶8} "I. THE TRIAL COURT'S DECISION TO GRANT PERMANENT CUSTODY [OF R.S.] TO LICKING COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE EVIDENCE WAS NOT CLEAR AND CONVINCING EVIDENCE AND THE JUDGMENT DID NOT CONSIDER THE BEST INTERESTS OF THE CHILDREN."

I.

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

{¶10} 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.

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

{¶11} 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:

{¶12} "(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 ***, 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.

{¶13} "(b) The child is abandoned.

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

{¶15} "(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 * * *."

{¶16} 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).

{¶17} In the case sub judice, the record contains, inter alia, three volumes of transcripts pertaining to the adjudication/disposition/permanent custody evidentiary hearing of March 31 and April 1, 2008. Although we are herein focused on R.S., the child of appellant, the transcripts reveal the pitiable state all three children were in at the time of agency intervention: The foster mother, Marianne Fixel, recalled that when the children first arrived at her home, in addition to the aforementioned lice issues and lack of proper clothing and coats, they revealed that they had not been taught how to use toilet paper or take regular baths. At age seven, J.S. did not know her alphabet, numbers, colors, or animals. W.S., the boy, would gorge his food at mealtime to the point of throwing up, perhaps suggesting that the siblings were used to competing for food. The three children at first insisted on sleeping together "in a pile" on the floor, and

indicated that they had sometimes slept in the bathtub at appellant's home. Tr. at 30-31. J.S. and W.S. both had a type of chronic respiratory aliment when they went into foster care, and both have had ongoing speech issues. Also, Ms. Fixel at one point began noticing a urine smell in the house, and finally figured out that W.S. had been urinating into a heating vent. He explained to her that in the past, the children "could pee wherever we wanted." Tr. at 51. W.S. and R.S. have also demonstrated aggressive behavior toward the two dogs and the cat who reside in the foster home. Ms. Fixel has also had to work with W.S. to keep him from grabbing his sisters' genital and breast areas.

{¶18} Ryan Houck of LCDJFS testified that the agency had had nine previous referrals concerning Dana, two referrals concerning Richard Sillin, and six referrals concerning appellant. In regard to Richard Sillin, Houck noted that he had two children from a previous relationship who were ordered into permanent custody in 2004. After Dana and Richard became separated in 2004, the agency continued to provide services to assist Dana's mental health, drug/alcohol and housing issues.

{¶19} The record documents that appellant receives social security disability for arthritis and degenerative nerve disorder, and has a child support obligation for three other children. He told the court he had "no clue" what his child support arrearage was. Tr. I at 143. Appellant also has mental health issues, namely bipolar disorder, but he has been inconsistent in obtaining medication for same. Appellant failed to complete a drug and alcohol assessment, a parenting program, an employment verification, and a medication assessment. Appellant refused to communicate with LCDJFS caseworkers

during the case plan, and apparently had a policy of never allowing caseworkers into the house. See Tr. at 219.

{¶20} Appellant, despite his consistent lack of cooperation with the agency, presently protests that the case plan ran only five months and was essentially geared toward adoption from the beginning. However, we must weigh this contention against the dire circumstances R.S. and her half-siblings were in at the time of agency intervention in this matter. Accordingly, 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 the children to be placed outside the home and that they cannot be placed with either parent within a reasonable period of time, were supported by competent, credible evidence and do not constitute reversible error.

Best Interests

{¶21} 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.

{¶22} 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:

{¶23} "(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;

{¶24} "(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;

{¶25} "(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 * * *;

{¶26} "(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;

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

{¶28} 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 the guardian ad litem report recommending permanent custody of the three children to the agency. Houck testified that permanent custody would be necessary to obtain a secure permanent placement for the children. Upon review, we find the record indicates that R.S. and the other two children are faring as well as can be reasonably expected with Ms. Fixel, given the onerous start they have received in life. Although appellant protests that the trial court did not adequately detail its "best interests" analysis, we will herein indulge in all reasonable presumptions in favor of the regularity of the

proceedings below. See *Channelwood v. Fruth* (June 10, 1987), Summit App.No. 12797, citing *In Re Sublett* (1959), 169 Ohio St. 19, 20, 157 N.E.2d 324. We conclude the trial court's rulings concerning the three children were made in the consideration of their best interests and did not constitute an error or an abuse of discretion.

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

{¶30} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Juvenile Division, Licking County, Ohio, 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 917

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

IN RE:	:	
	:	
J.S.	:	
	:	
W.S.	:	JUDGMENT ENTRY
	:	
R.S.	:	
	:	
Dependent Children	:	Case No. 09 CA 25

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