[Cite as *In re T.R.*, 2010-Ohio-429.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	JUDGES:
IN THE MATTER OF:	Hon. W. Scott Gwin, P. J.
	Hon. Sheila G. Farmer, J.
T.R	Hon. John W. Wise, J.
P.R.	
D.R.	Case No. 2009 CA 00235
Minor Children	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 07 JCV 00991
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 8, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JERRY COLEMAN STARK COUNTY DJFS 221 Third Street SE Canton, Ohio 44702	ROBERT ABNEY 116 Cleveland Avenue NW Suite 500 Canton, Ohio 44708

Wise, J.

{¶1} Appellant Paul Robinson ("Father") appeals the August 18, 2009 Judgment Entry, and August 18, 2009 Findings of Fact and Conclusions of Law entered by the Stark County Court of Common Pleas, Family Court Division, which terminated parental rights, responsibilities and obligations with respect to the three minor children, and granted permanent custody of the children to Appellee Stark County Department of Job and Family Services ("SCDJFS").

STATEMENT OF THE FACTS AND CASE

{¶2} Chaunte Reynolds and Appellant are the biological parents of T.R. (dob 1/19/05), P.R. (dob 1/12/06), and D.R. (dob 3/12/07).

{¶3} On August 17, 2007, the Stark County Department of Job and Family Services filed a Complaint alleging the children to be dependent, neglected and/or abused.

{¶4} Appellant Father Paul Robinson was incarcerated throughout the pendency of this action. He is not scheduled to be released from prison until 2012.

{¶5} The trial court placed the children in the temporary custody of the Department following an emergency shelter care hearing on August 21, 2007, wherein Chaunte Reynolds (Mother) appeared and stipulated to the court's finding of probable cause. The matter was set for hearing on September 12, 2007.

{¶6} The matter was set for trial for October 19, 2007 after the parties failed to reach an agreement at the September 12, 2007, hearing.

{¶7} At the adjudicatory hearing conducted on October 19, 2007, SCDJFS amended its Complaint, withdrawing the allegation of neglect. Mother stipulated to a finding of dependency. The trial court approved and adopted a case plan.

{¶8} On July 16, 2008, following a motion for extension of temporary custody, such temporary custody was extended to February 17, 2009. A second extension was requested on January 8, 2009.

{¶9} On February 9, 2009, SCDJFS amended their request for extension of temporary custody to a request for permanent custody.

{¶10} The initial phase of the permanent custody hearing took place on April 21, 2009 and April 27, 2009. The best interest hearing took place on August 11, 2009. Appellant father was transported from prison and was present at these hearings.

{¶11} Lisa Eggenschwiler, the ongoing family service worker assigned to the minor children in this action, testified that the initial and primary concern which resulted in the Department's involvement was the deplorable conditions of the home. (T. at 6). The home was very dirty and the children were sleeping on mattresses on the floor. Id. There were also reports that the home had drug activity. Id. The Department also became concerned when one of the children was taken to the hospital by a third party and the Mother could not be located. (T. at 7). Upon investigation, the Department learned that P.R. and T.R. were living with different seventeen year olds and D.R. was living with a nineteen year old. Id. The Department further learned that the Mother had placed the children in these homes in June of 2007. (T. at 7-8).

{¶12} Eggenschwiler detailed the requirements of the case plan, the purpose of which was to facilitate reunification. The recommendations made as a result of

Mother's parenting evaluation included her participation in a parenting education program; participation in anger management counseling; seek employment and provided two verifications a week showing that she had applied for jobs; complete a drug assessment through Quest and submit to random urine screens; and obtain appropriate housing.

{¶13} No parenting assessment was done for Appellant-Father due to his current incarceration and the fact that he is not expected to be released until 2012.

{¶14} Eggenschwiler stated that while Mother did make some inroads on her case plan, she failed to maintain steady employment and failed to obtain appropriate housing,

{¶15} Anita Young testified during the best interest portion of the hearing. She stated that T.R., D.R. and P.R. are African-American, that the children do not have any developmental or behavioral problems, and that the children have no obvious special needs. (T. III. at 6). She stated that D.R. does have severe asthma, for which he had to be on a nebulizer several times a week. Id. She further stated that the children had been in the Department's custody since August 20, 2007. She stated that the children have all bonded with their foster family and that they call their foster parents "Mom" and "Dad". (T. III. at 7).

{¶16} She further stated that their current foster home was "very loving and caring" and that the home was "safe and stable". She noted that the foster parents "take the children places and nurture them." (T. III. at 8). She stated that the children have also bonded with the foster parent's two biological children. Id. She stated that they meet all of the children's needs. She further stated with certainty that the foster

family was interested in adopting the children. She went on to state that placement with relatives was either unavailable or inappropriate. She explained that they had excluded the maternal grandmother, Tavy Reynolds, due to her lengthy history with the agency and her own children being in and out of the foster care system. (T. III at 9). She stated that they also reviewed the children's paternal grandmother, Holiday Trevares, but that she failed to follow through with all of the necessary drug testing. (T. III. at 11-12). The Department also had concerns about Ms. Trevares' health as she has severe pain from rheumatoid arthritis and that she had previously informed the Department that she was unable to take custody of a different child because her nerves were too bad. (T. III. at 11). She also noted that Ms. Trevares had only met the youngest child for the first time three weeks before the hearing. (T. III. at 13).

{¶17} A paternal aunt, Lori Mansfield, was also excluded due to a child endangering charge. Ms. Mansfield's daughter Britteny was also ruled out because she was only able to take one child. (T. III. at 13).

{¶18} Eggenschwiler expressed her belief it was in the children's best interest to grant permanent custody to the Department. She stated that the children are very bonded with their foster family but she has observed no bond with the Mother and these children. (T. III. at 18).

{¶19} MaryAnn McWhorter, the guardian ad litem, also testified in this matter, in addition to filing a written Report and Recommendation, in which she recommended permanent custody of the children be given to the Department. During her testimony she stated that the Mother had failed to show improvement over the two years that the case had been going on, and that she felt that the Mother was overwhelmed by the

children. (T. II. at 50). She further stated that over that two-year period, the Mother had repeatedly been untruthful. (T. II. at 54).

{¶20} By Judgment Entry dated August 18, 2009, the trial court terminated Parents' parental rights, privileges and obligations, and granted permanent custody of the children to the Department. The trial court issued Findings of Fact and Conclusions of Law on the same day.

{¶21} It is from the August 18, 2009 Judgment Entry, and Findings of Fact, Appellant-Father appeals, raising as error:

ASSIGNMENTS OF ERROR

{¶22} "I. THE TRIAL COURT ERRED IN FINDING THAT THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES MADE REASONABLE EFFORTS TO REUNIFY THE CHILDREN WITH THEIR PARENTS OR FAMILY MEMBERS.

{¶23} "II. THE TRIAL COURT ERRED IN FINDING THAT THE BEST INTERESTS OF THE CHILDREN WOULD BE SERVED BY GRANTING PERMANENT CUSTODY TO THE DEPARTMENT OF JOB AND FAMILY SERVICES."

{¶24} This case comes to us on the expedited calendar and shall be considered in compliance with App.R. 11.1(C).

I.

{¶25} In his first assignment of error, Appellant-Father argues that the trial court erred in finding that SCDJFS made reasonable efforts to reunify the children with their parents or family members. We disagree.

{¶26} Initially we must address the issue of standing as it applies to Appellant-Father as he is not asserting that the actions of the Department were prejudicial to him

directly, but instead were prejudicial to the Mother Chaunte Reynolds and to his mother, Holiday Trevares.

{¶27} One may not challenge an alleged error committed against a non-appealing party absent a showing that the challenger has been prejudiced by the alleged error. *In re D.H.,* Cuyahoga App. No. 82533, 2003-Ohio-6478, citing *In re Love* (1969), 19 Ohio St.2d 111, and *In re Cook* (Oct. 8, 1998), *Hancock* App. No. 5-98-16, unreported. *In re Angler* , 2007 WL 1829393, 10 (Ohio App. 5 Dist.) (Ohio App. 5 Dist., 2007).

{¶28} In this case, Appellant's mother, Holiday Trevares, is not a party to this appeal. Appellant therefore lacks standing to challenge the trial court's decision to not place the minor children with Ms. Trevares.

{¶29} As the children's mother, Chaunte Reynolds, has filed her own appeal in this matter in the related case, *In the matter of T.R, P.R., D.R.,* Stark App.No. 2009 CA 00236, we shall therefore proceed to address Appellant's argument set forth herein and incorporate same in our Opinion in the related appeal.

{¶30} In the case judice, SCDJFS filed its Motion for Permanent Custody pursuant to R.C. §2151.414. Pursuant to R.C. §2151.419, the agency which removed the child from the home must have made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, or make it possible for the child to return home safely. The statute assigns the burden of proof to the agency to demonstrate it has made reasonable efforts.

{¶31} However, R.C. §2151.419 does <u>not</u> apply in a hearing on a motion for permanent custody filed pursuant to R.C. §2151.413 and §2151.414. *In re C.F.,* 113

Ohio St.3d 73, 81, 2007-Ohio-1104, (Citation omitted). Therefore, the trial court was not required to make a specific finding that SCDJFS had made reasonable efforts to reunify the family.

{¶32} In *In re C.F.,* supra, the court also stated that this does not mean that the agency is relieved of the duty to make reasonable efforts. "At various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification. To the extent that the trial court relies on 2151.414(E)(1) at a permanent custody hearing, the court must examine the reasonable case planning and diligent efforts by the agency to assist the parents' when considering whether the child cannot and should not be placed with the parent within a reasonable time." Id. at paragraph 42.

{¶33} R.C. §2151.414.(E)(1) requires proof that the SCDJFS engaged in reasonable case planning and made "diligent" efforts to assist the parents in remedying the problems which caused the removal of the children.

{¶34} We find that the evidence as set forth above established that SCDJFS did provide services designed to alleviate the problem that led to the children's removal and did make diligent efforts to assist Appellant in remedying the problem.

{¶35} Appellant's first assignment of error is overruled.

II.

{¶36} In his second assignment of error, Appellant-Father maintains the trial court's finding that the best interests of the children would be served by granting permanent custody to SCDJFS.

{¶37} As an appellate court, we neither weigh the evidence nor judge the credibility of the 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. CA5758. 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 Constr.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶38} R.C. §2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing, and provide notice, upon filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶39} Following the hearing, R.C. §2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply:

{¶40} "(a) the child is not abandoned or orphaned, 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;

{¶41} "(b) the child is abandoned;

{¶42} "(c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or

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

{¶44} In determining the best interest of the child at a permanent custody hearing, R.C. §2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following:

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

{¶46} "(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;

{¶47} "(3) the custodial history of the child; and

{¶48} "(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."

{¶49} Therefore, R.C. §2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. §2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶50} If the child is not abandoned or orphaned, then the focus turns to whether the child can be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. §2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to

enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R.C. §2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶51} In the case sub judice, the trial court found that the minor children had been in the temporary custody of the agency for 12 or more of the past consecutive 22 months, and the children could not be placed with Appellant within a reasonable time. Those findings are alternate findings under R.C. § 2151.414(B)(1), R.C. § 2151.414(B)(1)(d) and (a), respectively. Either of those findings, if supported by the evidence, would have been sufficient, in and of itself, to base a grant of permanent custody pursuant to R.C. § 2151 .414(B)(1).

{¶52} Appellant does not appeal the trial court's finding that the children had been in the temporary custody of the Department for 12 or more of the past consecutive 22 months. Again, such a finding is enough to satisfy the requirements of R.C. § 2151.414(B)(1). See *In re: Whipple Children,* Stark App.No.2002CA00406, 2003-Ohio-1101. However, because the trial court made a finding that the children could not be placed with Appellant within a reasonable time, we shall review such finding.

{¶53} As set forth in our Statement of the Facts and Case, the children were initially removed after the Department received a referral due to the deplorable home conditions and the living arrangements of the children. The case plan required Mother, among other things, to obtain and maintain appropriate housing and employment. During the course of the proceedings, Mother failed to meet these objectives.

{¶54} During the best interest portion of the hearing, the ongoing caseworker testified that the children were bonded with their foster family, that the foster family

provided a very stable, safe and nurturing home for the children, and that the foster parents wanted to pursue adoption.

{¶55} Based upon the foregoing and the entire record in this matter, we find the trial court's findings that it was in the best interest of the children to grant permanent custody to the Department are supported by clear and convincing evidence.

{¶56} Appellant's second assignment of error is overruled.

{¶57} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE

/S/ W. SCOTT GWIN

/S/ SHEILA G. FARMER

JUDGES

JWW/d 0203

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

IN THE MATTER OF:	:	
	:	
T.R.	:	
P.R.	:	JUDGMENT ENTRY
D.R.	:	
	:	
Minor Children	:	Case No. 2009 CA 00235

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

Costs assessed to Appellant.

/S/ JOHN W. WISE_____

/S/ W. SCOTT GWIN_____

/S/ SHEILA G. FARMER_____

JUDGES