

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

A.Z.

JUDGES:

Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2009 CA 129

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Juvenile Case No.
F 2007-0700

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 3, 2010

APPEARANCES:

For Appellee Licking County Department
Of Human Services

For Appellant Sharon Zook

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LICKING COUNTY PROSECUTOR

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Guardian ad Litem for Child

Guardian ad Litem for Sharon Zook

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Hoffman, J.

{¶1} Appellant Sharon Zook (“Mother”) appeals the October 8, 2009 Judgment Entry entered by the Licking County Court of Common Pleas, Juvenile Division, which terminated all of her parental rights with respect to her minor daughter, A.Z., and granted permanent custody of the child to appellee Licking County Department of Job and Family Services, Children Service Division (“the Agency”).

STATEMENT OF THE CASE AND FACTS

{¶2} On September 17, 2007, the Agency filed a Complaint in the Licking County Court of Common Pleas, Juvenile Division, seeking an order for six-months protective supervision of A.Z. (DOB 9/24/97). The Agency became involved with Mother and A.Z. in August, 2007, due to concerns over poor supervision in the home; Mother’s inability to meet A.Z.’s physical and medical needs; and Mother’s permitting people to live in the home who were using drugs and alcohol. Within one week of the filing of the Complaint for protective supervision, the trial court placed A.Z. in the emergency shelter care custody of the Agency due to Mother’s noncompliance with the Agency’s directives. The Agency filed an Amended Complaint, seeking temporary custody of the child.

{¶3} The magistrate conducted an adjudicatory hearing on December 4, 2007, at which Mother agreed to a finding of dependency. The magistrate proceeded to disposition, finding it would be in A.Z.’s best interest to place her in the temporary custody of the Agency. The Agency developed a case plan for Mother which required her to identify and meet A.Z.’s medical and basic needs, identify non-safe persons living

in her home, and provide appropriate care and supervision for A.Z. Mother was also asked to work with a parent mentor to learn how to keep A.Z. safe.

{¶4} On August 19, 2008, the Agency filed a motion seeking an extension of the trial court's original order of temporary custody in order to give Mother additional time to work on her case plan, and to provide the Agency with an opportunity to explore a relative placement. Via Judgment Entry filed September 4, 2008, the trial court extended temporary custody until March 17, 2009. The Agency, however, filed a Motion for Permanent Custody on February 13, 2009, as Mother had been unsuccessful in making any progress on her case plan and her home situation had deteriorated. The magistrate conducted a hearing on the Motion for Permanent Custody on May 4, 2009.

{¶5} Catherine Weber, an ongoing social worker with the Agency, testified she was assigned to work with the family on September 25, 2007, following A.Z.'s removal from the home. Weber discussed the concerns in the home which led to the Agency's initial involvement. Weber explained it had been hard to address issues with Mother because the information Mother provided was either not accurate or not truthful. For example, the Agency tried to assist Mother in budgeting her living expenses, which the Agency calculated based upon one person living in the household. In actuality, four adults were living in the household. The Agency repeatedly informed Mother Harold Lucas was not a safe person to be in the home because of an extensive and severe alcohol problem. Mother, nonetheless, allowed Lucas to remain in the home and supervise A.Z.. Weber and Mother discussed this situation throughout the course of the matter. At the time of the hearing, Lucas was no longer in the home as he had passed away in February, 2009. Mother's boyfriend, Clifford Cessor, was living in the home.

The Agency advised Mother he, too, was an inappropriate caregiver for A.Z. Cessor had a criminal record, including corruption of a minor with drugs for which he was on probation. Although Mother repeatedly denied either of the two men lived with her, when Weber called or arrived unannounced, one or both of the men would be there. Mother's adult son and girlfriend, who had had three of her own children removed, were also living in the home. The couple had problems with domestic violence as well as drug and alcohol use. The couple did not leave the residence until April, 2008. In January, 2009, Weber learned the lease to Mother's apartment was in Lucas's name.

{¶6} Weber expressed her concerned that if A.Z. were returned to the home, Mother would continue to permit inappropriate people to be around the child. Weber believed A.Z. would be left to the mercy of the other adults in the home as Mother was not in a position to protect the child. Due to her cognitive limitations, Mother is unable to identify what is a risk to A.Z.. Mother is a hard worker and has been at the same job for a long time. However, Mother spends her pay on the other adults in the home, leaving her unable to meet A.Z.'s needs. Weber reviewed Mother's budget with her following Lucas's death. Weber showed Mother she had more than enough money coming in to meet her bills. Mother admitted to Weber she had been buying alcohol for Lucas, using her own money. Weber noted this was just one example of Mother not being able to handle her own money appropriately.

{¶7} Throughout the proceedings, Mother resided in a one bedroom apartment which Weber stated would be fine if she were living on her own. However, because Mother never has been the only one living in her home, Weber had extreme concerns A.Z. would not have a place to separate herself from the others. Further, there was

nothing for a child in the home, nor had there been when A.Z. was initially removed. Mother never recognized holidays and birthdays with gifts for A.Z.

{¶8} With respect to visits, Weber testified both Mother and A.Z. enjoy their visits together, and looked forward to them. However, during visits, A.Z. took the parenting role, leading and directing the conversation. A.Z. is very “parentified”, asking Mother if she paid her bills and discussing Mother’s financial situation.

{¶9} Weber recognized Mother’s cognitive delays, but noted Mother knows the difference between a truth and a lie, and the difference between right and wrong. Mother also knows what a rule is and whether such is being followed or not. Mother is simply noncompliant and had been for the entire course of the proceedings. After a year and a half, Mother was still not following the rules. Weber explained this inability to follow the rules would place A.Z. at significant risk, and Mother was still unable to assess risks to the child. Because of Mother’s lack of compliance and cooperation, Weber has been unable to move forward with services.

{¶10} Carla Steiner, a social worker with the agency, supervised Mother’s visits with A.Z. from October, 2007, until October, 2008. Of seventeen visits scheduled between October 3, 2007, and March 28, 2008, Mother was permitted to attend only five visits because of an ongoing issue with lice. During visits, Mother would re-infest A.Z. which resulted in the child missing a significant amount of school. Although Steiner instructed Mother to have the other people in her home checked and treated for lice, Mother never did so.

{¶11} Steiner testified Mother and A.Z. did well together at the visits, and they love each other and are bonded. However, when observing the two at visits, Steiner noted A.Z. took the parental role and Mother permitted the girl to do so. A.Z. would become upset with Mother for not recognizing her birthday or Christmas.

{¶12} Jean Neader, a service coordinator with the Licking County Board of MRDD, testified Mother is one of her clients. Neader explained she typically meets with a client four times per year, although, some individuals need additional assistance. During the last year, Mother had asked Neader for help paying her rent on several occasions. Mother works full time at Goodwill, earning \$8.00/hour, and bringing home slightly over \$500.00 every two weeks. Neader had attempted to speak with Mother about where her money goes, however, Neader has been unable to ascertain such information from Mother.

{¶13} The guardian ad litem rendered her opinion it was in A.Z.'s best interest for the Agency to be granted permanent custody. The magistrate issued his decision on May 14, 2009, recommending Mother's parental rights be permanently terminated, and the Agency be granted permanent custody of the child. Mother filed timely objections to the magistrate's decision.

{¶14} Via Judgment Entry and Decision, both filed October 8, 2009, the trial court overruled Mother's objections to the magistrate's decision, and approved and adopted said decision as order of the court.

{¶15} It is from this judgment entry Mother appeals, raising as her sole assignment of error:

{¶16} “I. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF A.Z. TO THE LICKING COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, BECAUSE ITS FINDING THAT A.Z. COULD NOT BE PLACED WITH HER MOTHER, SHARON ZOOK, WITHIN A REASONABLE AMOUNT OF TIME WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.”

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

I

{¶18} In her sole assignment of error, Mother contends the trial court's finding A.Z. could not be returned to Mother within a reasonable time was against the manifest weight of the evidence.

{¶19} 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.

{¶20} Furthermore, it is well-established “[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.

{¶21} 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.

{¶22} 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: (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; (b) the child is abandoned; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (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.

{¶23} 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: (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; (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; (3) the custodial history of the child; and (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.

{¶24} 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.

{¶25} If the child is not abandoned or orphaned, then the focus turns to whether the child cannot 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.

{¶26} Mother contends she substantially complied with terms of her case plan and should be given additional time in which to remedy the conditions which caused A.Z.'s removal. As set forth in our Statement of the Case and Facts, *supra*, Mother did not substantially comply with the case plan. Mother was repeatedly instructed to not allow unsafe persons to be around A.Z., however, she continued to let such people live in her home. Mother has cognitive difficulties, however, the testimony revealed she

knows the difference between right and wrong, but chooses not to take appropriate actions.

{¶27} Based upon the foregoing and the entire record in this matter, we find the trial court's finding A.Z. could not be placed with Mother within a reasonable time was not against the manifest weight of the evidence.

{¶28} Mother's sole assignment of error is overruled.

{¶29} The judgment of the Licking County Court of Common Pleas, Juvenile Division, is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE

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

IN THE MATTER OF:

A.Z.

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JUDGMENT ENTRY

Case No. 2009 CA 129

For the reasons stated in our accompanying Opinion, the judgment of the Licking County Court of Common Pleas, Juvenile Division, is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE