

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

D.D.S. AND D.T.S.,

MINOR CHILDREN

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. W. Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. 2010CA00187

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Family Court Division,
Case No. 2009JCV00882

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 22, 2010

APPEARANCES:

For Appellant

For Appellee

ALLYSON J. BLAKE
122 Central Plaza N-Ste 101
Canton, Ohio 44702

JERRY COLEMAN
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Hoffman, J.

{¶1} Appellant Daneeca Ball (“Mother”) appeals the June 18, 2010 Judgment Entry, and June 18, 2010 Findings of Fact and Conclusions of Law entered by the Stark County Court of Common Pleas, Family Court Division, which terminated her parental rights, privileges and responsibilities with respect to her two minor children, and granted permanent custody of the children to Appellee Stark County Department of Job and Family Services (“the Agency”).¹

STATEMENT OF THE FACTS AND CASE

{¶2} Mother is the biological mother of D.D.S. (D.O.B. 5/18/05) and D.T.S. (5/20/08). On July 9, 2009, the Agency filed a complaint, alleging the children to be dependent, neglected, and/or abused, and seeking temporary custody of the children. After an emergency shelter care hearing, the trial court placed the children in the temporary custody of the Agency. The trial court adjudicated the children dependent on October 1, 2009. The trial court approved and adopted a case plan. The case plan required Mother to complete a parenting assessment at Northeast Ohio Behavioral Health, and follow all recommendations; and complete a substance abuse assessment at Quest Recovery Services and follow all recommendations.

{¶3} The Agency filed a Motion for Permanent Custody on March 1, 2010. The trial court conducted a hearing on the motion on June 3, 2010.

{¶4} Doctor Aimee Thomas of Northeast Ohio Behavioral Health completed the parenting assessment of Mother. Dr. Thomas had completed a similar assessment of

¹ Donald Strong (“Father”), the biological father of both children, is not a party to this Appeal.

Mother in 2007, during a prior Agency involvement with the family. Dr. Thomas conducted psychological testing, substance abuse screening, and intelligence testing and compared the results with the results of the 2007 assessment. During the evaluation, Mother brought a tape recorder and played religious music. Mother would not turn off the music, explaining God had instructed her to play the music during the interview. Mother also played this music during her visitation time with the children. Dr. Thomas diagnosed Mother with schizophrenia, noting she exhibits both auditory and visual hallucinations. Dr. Thomas explained individuals diagnosed with schizophrenia who have auditory hallucinations utilize stimulus, such as music, to cover up such hallucinations. Mother “adamantly denied” experiencing any auditory hallucinations. Nonetheless, Mother stated God spoke to her and directed her to marry Father, who was, at the time, incarcerated for gross sexual imposition involving an unrelated eight year old child. Mother stated she must satisfy God’s will above all and marry Father even if it meant sacrificing her family.

{¶15} Mother advised Dr. Thomas she had experienced depressive symptoms in the past, but had addressed such by listening to religious music. Dr. Thomas diagnosed Mother as suffering from religious delusions which interfered with her basic functioning, and caused her to be unable to meet the basic needs of the children and herself. Mother’s religious fixation took priority over her interactions with the children. Although in 2007, after Mother’s first evaluation, Dr. Thomas provided recommendations for reunification, based upon the current evaluation, she was unable to give any recommendation for reunification. Dr. Thomas explained she was unable to give any recommendations due to Mother’s refusal to accept her mental health

diagnosis, her lack of cooperation in addressing her mental health issues, and her commitment to Father without any recognition of the threat he posed to her children.

{¶6} Mother denied suffering from any mental illness. Although she was placed on medication, she refused to take it and returned the pills to community services. During visitation, Mother was unable to provide supervision to both children at the same time. Intervention was often necessary to assure the children did not wander off. Mother was also unable to focus on both children at the same time for the entirety of the visit.

{¶7} D.D.S. is five years of age. When he was first removed from Mother's care, he exhibited behavioral problems, including smearing feces, urinating in class, and fighting with other children. D.D.S. was also delayed with regard to his letter recognition. He was diagnosed as suffering from adjustment disorder and his behavior had improved with counseling. D.D.S. is preoccupied about his safety as well as the safety of his brother, and is the result of his feeling unsafe at some point during his short life. According to his counselor, D.D.S. needs an environment with unconditional love and positive reinforcement. Although the child has made drastic progress, he exhibits behavioral problems after visiting with Mother. The counselor also stated removing D.D.S. from his current placement would not only confuse the child, but also let him down, resulting in severe negative behavior.

{¶8} D.T.S. is two years of age and was developmentally delayed at the time of his removal. At eighteen months of age, D.T.S. was functioning at the level of a nine to twelve month old. He has received occupational, speech and education therapies and has made dramatic improvement. He is currently developmentally age appropriate.

{¶9} Both children are placed in the same foster home and are bonded with their foster parents. The foster parents wish to adopt both boys.

{¶10} Via Judgment Entry filed June 18, 2010, the trial court terminated Mother's parental rights, privileges and obligations, and granted permanent custody of the children to the Agency. The trial court also filed Findings of Fact and Conclusions of Law on the same day.

{¶11} It is from this judgment entry Mother appeals, raising the following assignments of error:

{¶12} "I. THE JUDGMENT OF THE TRIAL COURT THAT THE MINOR CHILDREN CANNOT OR SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶13} "II. THE JUDGMENT OF THE TRIAL COURT THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

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

I, II

{¶15} Because Mother's first and second assignments of error are interrelated, we shall address said assignments of error together. In her first assignment of error, Mother asserts the trial court's finding the children cannot or should not be placed with her within a reasonable time is against the manifest weight and the sufficiency of the

evidence. In her second assignment of error, Mother maintains the trial court's finding the best interest of the children would be served by granting permanent custody to the Agency is against the manifest weight and the sufficiency of the evidence.

{¶16} 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.

{¶17} 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 the 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.

{¶18} 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.

{¶19} 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.

{¶20} 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.

{¶21} 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.

{¶22} As set forth in our Statement of the Facts and Case, Dr. Aimee Thomas diagnosed Mother as schizophrenic. Mother experienced both auditory and visual hallucinations, but denied the same. Mother did state God spoke to her and directed her to marry Father, and was willing to do so even if it meant sacrificing her family. Mother refused to take medication prescribed for her disorder. With respect to the best interest portion of the hearing, the evidence established both boys are in the same foster home and are bonded with their foster parents. Although D.D.S. had behavioral problems when initially removed from Mother's care, he had made dramatic improvement. His counselor feared the child would regress if removed from his foster home. D.T.S. was developmentally delayed when he was removed from his Mother's care, however, he is now developmentally on target.

{¶23} Based upon the foregoing and the entire record in this matter, we find the trial court's finding the children could not be placed with Mother within a reasonable time and a grant of permanent custody was in the best interest of the children are not against the manifest weight of the evidence, and not based upon insufficient evidence.

{¶24} Mother's first and second assignments of error are overruled.

{¶25} The judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Gwin, J. concur

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

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ W. Scott Gwin
HON. W. SCOTT GWIN