

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE T.H. : JUDGES:
: :
: Hon. Julie A. Edwards, P.J.
: Hon. John W. Wise, J.
: Hon. Patricia A. Delaney, J.
: :
: Case No. 2009 CA 0148
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: OPINION

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas, Juvenile Division, Case
No. 2006-DEP-00021

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: May 25, 2010

APPEARANCES:

For Mother-Appellant:

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For Appellee:

EDITH A. GILLIAND
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Delaney, J.

{¶1} Mother-Appellant Julee Edwards appeals the December 16, 2009, judgment entry of the Richland County Court of Common Pleas, Juvenile Division, awarding permanent custody of her child, T.H. to the Richland County Children Services Board. Appellee is the Richland County Children Services Board (“RCCSB”).

STATEMENT OF THE FACTS AND THE CASE

{¶1} Appellant Julee Edwards is the mother of T.H. (d.o.b. 2/20/2001) and J.H. (d.o.b. 1/12/2002). Appellant is married to Christopher Edwards, who was convicted of two counts of gross sexual imposition in 1998 for his acts against a six-year old girl. The children’s father is Verne Harmison.¹ Since 2005, Harmison has been consistently incarcerated for various felony offenses.

{¶2} RCCSB has been involved with Appellant and the children since 2006 due to issues with Appellant’s ability to parent her children and provide a safe and clean living environment. A case plan was established for Appellant on January 13, 2006, that required Appellant to participate in case management services at Family Life Counseling; take a Parent Aide or parenting class; participate in mental health counseling; and provide proper supervision of the children and provide for the children’s basic needs, which included stable housing and with working utilities that was maintained in a safe and clean manner. The children were placed with their maternal grandparents while Appellant complied with her case plan.

{¶3} In November 2006, the children were returned to Appellant under RCCSB protective supervision. Appellant was ordered that the children have no contact with Christopher Edwards.

{¶4} On March 22, 2007, RCCSB was granted emergency shelter care of the children and the children were placed in foster care. On June 11, 2007, RCCSB was awarded temporary custody of the children. RCCSB moved for permanent custody on April 30, 2008.

{¶5} During the pendency of the action, RCCSB was unable to locate Verne Harmison. In January 2009, Harmison contacted RCCSB for information regarding his children. RCCSB established a case plan for Harmison and Harmison engaged in three visits with the children before he was convicted for another felony offense and returned to prison.

{¶6} The trial court held a hearing on the motion on October 20, 2009. At trial, testimony was elicited regarding Appellant's progress on her case plan. Amanda Campbell, a placement social worker with RCCSB assigned to work with Appellant, testified as to Appellant's progress. While Appellant had completed a parenting course, Appellant had failed to complete her sessions with Family Life Counseling. Meeting the basic needs of the children and supervision were made a part of Appellant's case plan because of Appellant's failure to keep the home in a sanitary and safe condition suitable for the children. Appellant's home was infested with roaches requiring professional extermination.

{¶7} The final objective in Appellant's case plan was that the children have no contact with Christopher Edwards, Appellant's husband. Campbell testified that RCCSB had a substantiated sex abuse claim against Edwards concerning T.H., although Edwards has not been prosecuted for the alleged abuse. Appellant refused to believe T.H.'s allegations and thought that T.H. made them up.

¹ Verne Harmison has also filed appeals of the award of permanent custody to RCCSB.

{¶8} As a result of the hearing, the trial court determined that permanent custody of the children should be awarded to RCCSB by judgment entry on December 16, 2009. It is from this decision Appellant now appeals.

ASSIGNMENTS OF ERROR

{¶9} Appellant raises two Assignments of Error:

{¶10} “I. TRIAL COURT’S CONCLUSION THAT PERMANENT CUSTODY WAS WARRANTED IS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

{¶11} “II. THE TRIAL COURT DENIED APPELLANT APPELLANT/MOTHER [SIC] DUE PROCESS IN THE CONDUCT OF THE TRIAL.”

I.

{¶12} Appellant argues in her first Assignment of Error that the trial court erred in granting permanent custody to RCCSB. We disagree.

{¶13} A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined “clear and convincing evidence” as “[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty, as required beyond a reasonable doubt, as in criminal cases.” *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118; *In re: Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 481 N.E.2d 613.

{¶14} In reviewing whether the trial court based its decision upon clear and convincing evidence, “a reviewing court will examine the record to determine whether

the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54, 60; See also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. If the trial court's judgment is “supported by some competent, credible evidence going to all the essential elements of the case,” a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74, 564 N .E.2d 54.

{¶15} Moreover, “an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law.” *Id.* Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273:

{¶16} “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.”

{¶17} Moreover, deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well.” *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 419, 674 N.E.2d 1159; see, also, *In re: Christian*, Athens App. No. 04CA10, 2004-Ohio-3146; *In re: C. W.*, Montgomery App. No. 20140, 2004-Ohio-2040.

{¶18} 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.

{¶19} 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.

{¶20} 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.

{¶21} 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.

{¶22} 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.

{¶23} In the first prong of the hearing, the trial court determined that the evidence demonstrated that T.H. had been in the custody of RCCSB for twelve or more months of a consecutive twenty-two month period. The parties stipulated at the hearing that T.H. had been in the temporary custody of RCCSB since June 28, 2007, and T.H. had been in temporary custody for twelve or more months of a consecutive twenty-two month period. (T. 11, 12). Appellant does not challenge the trial court's finding or the stipulation. This finding alone in conjunction with a best interest finding is sufficient to support the grant of permanent custody. *In re Calhoun*, Stark App. No. 2008CA00118, 2008-Ohio-5458, ¶45.

{¶24} In addition, the evidence supported the trial court's finding that T.H. could not be placed with Appellant within a reasonable time. The testimony demonstrated

that Appellant had not completed her case plan as to mental health counseling because she did not feel she had any personal issues or emotional illness to remedy. As stated above, Appellant was required to attend Family Life Counseling as part of her case plan. Appellant was diagnosed with depression but was terminated from her counseling sessions for her failure to cooperate in the sessions. (T. 25).

{¶1} With regard to the children's best interests, Campbell testified that Appellant has not put the needs of T.H. above her relationship with Christopher Edwards, Appellant's husband. Appellant refused to believe the sexual abuse allegations that T.H. made against Edwards, feeling that RCCSB "brainwashed" T.H. into making the allegations. The children's placement in RCCSB custody has prevented their contact with Christopher Edwards. Campbell testified that Edwards was living with his mother but spending weekends with Appellant. Edwards provided for all of Appellant's expenses.

{¶2} J.H. and T.H. reside in the same foster home and have stability in the home. Both children have behavioral issues, which are being medically addressed and have been noticeably reduced. The children both attend school. The children are bonded with their foster parents, who plan to adopt them.

{¶3} The guardian ad litem in the case recommended that RCCSB be granted permanent custody of J.H. and T.H.

{¶4} We find based on the above, the trial court's finding that permanent custody was in the best interests of T.H. was not against the manifest weight or sufficiency of the evidence. Appellant's first Assignment of Error is overruled.

II.

{¶25} Appellant argues in her second Assignment of Error that Appellant's due process rights were violated during the hearing because the trial court judge asked questions of the witnesses. We disagree.

{¶26} Evid.R. 614(B) provides that the court "may interrogate witnesses, in an impartial manner, whether called by itself or a party." *Syslo v. Syslo*, Lucas App. No. L-01-1273, 2002-Ohio-5205, ¶83. Unless there is a showing of bias, prejudice, or prodding of a witness to elicit partisan testimony, it is presumed that the trial court acted impartially in questioning a witness as to a material fact or to develop the truth. *Jenkins v. Clark* (1982), 7 Ohio App.3d 93, 98, 454 N.E.2d 541. During the course of its examination, the court may, in the interests of justice, ask proper questions of witnesses, even if these are leading questions. *Id.* at 97, 454 N.E.2d 541, citing *Gilhooley v. Columbus Ry. Power & Light Co.* (1918), 20 Ohio N.P. (N.S.) 545.

{¶27} Upon review of the record, we find the trial court's questions of the witnesses did not go beyond the parameters of Evid.R. 614(B).

{¶28} Appellant's second Assignment of Error is overruled.

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

By: Delaney, J.

Edwards, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. JOHN W. WISE

PAD:kgb

