

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
B.C.	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
MINOR CHILD	:	
	:	
	:	Case No. 2009CA00257
	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Family Court Division, Case No. 2008JCV00613
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	March 2, 2010
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APPEARANCES:

For Appellant

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For Appellee

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Farmer, J.

{¶1} On June 8, 2008, appellee, the Stark County Department of Job and Family Services, filed a complaint for protective supervision of B.C. born May 30, 2008, alleging the child to be dependent and/or neglected. Mother of the child is appellant, Ashley Cloud; father is Adam Beadnell. By judgment entry filed July 18, 2008, the trial court found the child to be dependent and placed the child in the temporary custody of the maternal grandmother, Pam Tanner, with appellee maintaining protective supervision. Because the maternal grandmother could no longer take care of the child, the trial court granted appellee temporary custody of the child on November 18, 2008.

{¶2} On May 20, 2009, appellee filed a motion for permanent custody. On May 28, 2009, appellant filed a motion for change of legal custody, seeking to place the child with a step-sister, Nancy Brown, and her husband. A hearing was held on July 6, 2009. By judgment entry filed September 16, 2009, the trial court granted permanent custody of the child to appellee. Findings of fact and conclusions of law were filed contemporaneously with the judgment entry.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

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

II

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

I, II

{¶6} Appellant claims the trial court's decisions that the child could not be placed with her within a reasonable time and it was in the child's best interests to grant appellee permanent custody of the child were against the manifest weight and sufficiency of the evidence. We disagree.

{¶7} 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* (February 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.

{¶8} R.C. 2151.414 governs procedures upon the filing of a motion for permanent custody. Subsections (B)(1) and (2) state the following in pertinent part:

{¶9} "(B)(1) 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:

{¶10} "(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.

{¶11} "(b) The child is abandoned.

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

{¶13} "(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***.

{¶14} "(2) With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of this section that permanent custody is in the child's best interest."

{¶15} R.C. 2151.414(D)(1) sets out the factors relevant to determining the best interests of the child. Said section states relevant factors include, but are not limited to, the following:

{¶16} "(a) 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;

{¶17} "(b) 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;

{¶18} "(c) 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***;

{¶19} "(d) 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;

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

{¶21} R.C. 2151.414(E) sets out the factors relevant to determining permanent custody. Said section states in pertinent part as follows:

{¶22} "(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's

parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶23} "(1) Following 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. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

{¶24} "(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

{¶25} "(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

{¶26} "(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

{¶27} "(10) The parent has abandoned the child.

{¶28} "(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section 2151.353 or 2151.415 of the Revised Code,***and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

{¶29} "(16) Any other factor the court considers relevant."

{¶30} Appellant argues she qualified for MRDD services, but was never referred to these services. Appellant argues this demonstrated a lack of reasonable case planning.

{¶31} The ongoing social worker assigned to the case, Verlinda Bennett, testified appellant lost custody of a previous child in Carroll County, Ohio in 2004. T. at 6. At the time of B.C.'s birth, appellant tested positive for marijuana and cocaine use. T. at 6-7. Pursuant to the case plan, appellant was to "follow through with her parenting evaluation and follow recommendations. Um also Mom was to follow through with drug assessment and follow through with recommendations." T. at 14. Although appellant completed a program for substance abuse in September of 2008, she had a relapse in

November. T. at 14-15. She tried to commit suicide in December. T. at 9. Appellant admitted to using crack cocaine and refused to submit to urine testing. T. at 16. Following the relapse, appellant did not continue with any parenting services. T. at 17. Appellant felt she did not need any services because she could care for her child. Id.

{¶32} As for MRDD services, Ms. Bennett stated before referring appellant to MRDD services, she would like to see appellant stable and off drugs. T. at 26. "Before she could even follow through with those services she would have to be not abusing drugs and be off of that and to be stable on her psychotropic medication." Id.

{¶33} Ms. Bennett testified father has not been compliant with the case plan, and has in fact "disavowed" the child." T. at 19, 22.

{¶34} The psychology assistant from Northeast Ohio Behavioral Health assigned to evaluate appellant, Aimee Thomas, testified appellant suffers from schizoaffective disorder. T. at 29. Appellant has been diagnosed with bipolar disorder, schizophrenia, and schizoaffective disorder. Id. Appellant "hears voices. She sees things. She had heard command voices that instructed her to harm others." Id. At age 17, appellant stabbed her mother with a knife. Id. Appellant's "full IQ is 60. Essentially she was functioning at the level of a 6 year old in terms of non verbal IQ and 9 years old in terms of verbal IQ." T. at 30. Appellant "essentially meets the criteria for mental retardation and developmental delays." Id. Appellant admitted to Ms. Thomas to engaging in prostitution to supply her drug habits, and to using cocaine during her pregnancy with B.C. Id. Ms. Thomas opined appellant was "[a]bsolutely not" capable of caring for a small child. Id. Given the fact that appellant suffers from three disorders, Ms. Thomas doesn't "have any hope for her in the future." T. at 31.

{¶35} Based upon the cited testimony, there is no evidence to suggest that MRDD services would have assisted appellant "in gaining insight" into her problems. Appellant's Brief at 6.

{¶36} Upon review, we find the trial court did not err in determining that the child could not and should not be placed with appellant within a reasonable time.

{¶37} As for best interests, appellant argues the trial court should have granted her motion to change legal custody to her step-sister, Nancy Brown, and her husband. The Browns are not biologically related to the child. T. at 41-42.

{¶38} Ms. Bennett testified the child has been in foster care since November of 2008, and has developed a strong bond with the foster family. T. at 36-37. The foster family is "open to having an open adoption" to allow visits from appellant and the maternal grandmother. T. at 37.

{¶39} Ms. Bennett's first contact with Ms. Brown was in February of 2009, five months prior to the hearing. T. at 47. Ms. Brown spent approximately two hours or less with the child. Id. Following the visit, Ms. Brown stated that the child appeared to suffer from cerebral palsy. T. at 46. Ms. Bennett testified the child was healthy and did not suffer from any medical conditions. Id.

{¶40} Ms. Bennett opined the child would benefit from adoption with the foster family because the child needed stabilization. T. at 48.

{¶41} Upon review, we find the trial court did not err in determining the best interests of the child were best served by granting permanent custody to appellee.

{¶42} Assignments of Error I and II are denied.

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

By Farmer, J.

Edwards, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

SGF/db 0201

