

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

A.L. and

J.L.

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 11 CA 23

DEPENDENT/NEGLECTED CHILDREN

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Juvenile Division, Case No. 09 JC
609

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 8, 2012

APPEARANCES:

For Appellee

For Appellant

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Wise, J.

{¶1} Appellant-Mother Debra Lucas appeals the decision of the Guernsey County Court of Common Pleas, Juvenile Division, which granted permanent custody of her minor children A.L. and J.L. to Appellee Guernsey County Children Services Board (“GCCSB”). The relevant facts leading to this appeal are as follows.

{¶2} Appellant is the mother of the two children at issue in this matter, A.L., born in 1996, and J.L., born in 2002. The father of A.L. is Terry Kaczur, who has filed a separate appeal. As of the date of the judgment entry under appeal, J.L.’s paternity had not been established.

{¶3} On October 28, 2009, GCCSB filed a complaint in the Guernsey County Court of Common Pleas, Juvenile Division, alleging A.L. and J.L. to be dependent and/or neglected. GCCSB filed the complaint based on concerns about Debra’s mental health issues and Debra not providing proper health care concerning A.L. Both children were placed in temporary agency care via an ex parte order.

{¶4} The matter proceeded to an adjudicatory hearing on December 17, 2009. The trial court thereafter issued a judgment entry finding A.L. to be neglected and J.L. to be dependent.

{¶5} In the meantime, Terry Kaczur and his mother, Carolyn Wigger, each filed a motion for custody of both children.

{¶6} On September 15, 2010, GCCSB filed a motion for permanent custody of A.L. and J.L. Evidentiary hearings were conducted on the permanent custody motion on January 13, March 28, and July 15, 2011.

{¶7} After hearing the evidence, the trial court issued a judgment entry on August 3, 2011, granting permanent custody of A.L. and J.L. to the agency.

{¶8} On August 8, 2011, appellant filed a notice of appeal. She herein raises the following two Assignments of Error:

{¶9} “I. THE TRIAL COURT ERRED IN FINDING THAT THE CHILDREN COULD NOT BE PLACED WITH THE MOTHER IN A REASONABLE AMOUNT OF TIME PURSUANT TO O.R.C. SEC. 2151.414(B)(2).

{¶10} “II. THE TRIAL COURT ERRED IN FINDING THAT PERMANENT CUSTODY WAS IN THE BEST INTERESTS OF THE CHILDREN UNDER O.R.C. SEC. 2151.414(D).”

I.

{¶11} In her First Assignment of Error, Appellant-Mother contends the trial court erred in granting permanent custody of A.L. and J.L. to the agency. We disagree.

{¶12} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base his or her judgment. *Cross Truck v. Jeffries* (Feb. 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, 376 N.E.2d 578. Furthermore, it is well-established that the trial court is in the best position to determine the credibility of witnesses. See, e.g., *In re Brown*, Summit App.No. 21004, 2002-Ohio-3405, ¶ 9, citing *State v. DeHass* (1967), 10 Ohio St .2d

230, 227 N.E.2d 212. In the case sub judice, the trial court relied on R.C. 2151.414(B)(2), which states as follows:

{¶13} “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.”¹

{¶14} In determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, a trial court is to consider the existence of one or more factors under R.C. 2151.414(E), including whether or not “[f]ollowing 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.” See R.C. 2151.414(E)(1).

¹ Appellant has not herein specifically challenged the trial court's utilization of R.C. 2151.414(B)(2), which has a narrower application than R.C. 2151.414(B)(1)(a). See *In re A.U.*, Montgomery App. No. 22264, 2008–Ohio–186, ¶ 17. We decline to examine this issue sua sponte.

{¶15} The record in the case sub judice reveals that A.L. has Hodgkin's Lymphoma and thus has specific medical needs. Appellant was evaluated by Gary Wolfgang, Ph.D., and found to be "floridly psychotic," diagnosed with paranoid schizophrenia. Dr. Wolfgang expressed concerns over her ability to properly care for the children. According to the case worker, Johnna Denbow, appellant was compliant with most aspects of her case plan, but there have been questions as to appellant's consistency in taking her psychotropic medication. Appellant nonetheless maintains she was following her case plan and making improvements in her mental health condition. (Appellant's Brief at 6). However, even where a parent has participated in his or her case plan and completed most or all of the plan requirements, a trial court may still properly determine that such parent has not substantially remedied the problems leading to agency involvement. See, e.g., *In re Pendziwiatr/Hannah Children*, Tuscarawas App.No. 2007 AP 03 0025, 2007-Ohio-3802, ¶ 27.

{¶16} Upon review of the record and the three days of evidentiary proceedings, we find the trial court did not commit reversible error in determining that A.L. and J.L. could not or should not be placed with appellant-mother within a reasonable time under R.C. 2151.414(B)(2).

{¶17} Accordingly, appellant's First Assignment of Error is overruled.

II.

{¶18} In her Second Assignment of Error, appellant contends the trial court erred and abused its discretion in finding the children's best interests would be served by granting permanent custody to the agency. We disagree.

{¶19} It is well-established that “[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.

{¶20} In determining the best interest of a child for purposes of permanent custody disposition, the trial court is required to consider the factors contained in R.C. 2151.414(D). These factors are as follows:

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

{¶22} “(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;

{¶23} “(3) 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 * * *;

{¶24} “(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 to the agency;

{¶25} “(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.”

{¶26} The record indicates that although A.L. and J.L. love appellant-mother and have looked forward to visits, A.L. has stated that she does not wish to return to living with her mother. Both children were described as adjusting well to foster care. The children were also “ambivalent” about maintaining contact with Terry Kaczur, who lives out-of-state and is not under any child support order. The guardian ad litem and CASA advocate have both strongly recommended permanent custody and the need for a stable environment.

{¶27} Upon review, we find the trial court did not err in determining the best interests of the children would be best served by granting permanent custody to GCCSB.

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

{¶29} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Juvenile Division, Guernsey County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JUDGES

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

IN THE MATTER OF:

A.L. and

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DEPENDENT/NEGLECTED CHILDREN

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JUDGMENT ENTRY

Case No. 11 CA 23

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

Costs assessed to appellant.

JUDGES