

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN RE: X.N.

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 2014CA00213

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court  
of Common Pleas, Juvenile Division,  
Case No. 2013-JCV-00877

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

May 4, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant C.D.

LISA A. LOUY  
Stark County Job and  
Family Services  
221 Third Street SE  
Canton, OH 44702

MARY G. WARLOP  
116 Cleveland Ave. NW  
Canton, OH 44702

*Baldwin, J.*

{¶1} Appellant C.D. appeals a judgment of the Stark County Common Pleas Court, Juvenile Division, awarding legal custody of her son X.N. (D.O.B. 3/25/2012) to his natural father, D.N. Appellee is the Stark County Department of Job and Family Services (SCJFS).

#### STATEMENT OF FACTS AND CASE

{¶2} Appellee became involved with X.N. in April of 2013, on a voluntary, non-court basis. Appellee's concerns centered around appellant's mental health. The agency attempted to provide services including a parenting evaluation and referrals for counseling, but appellant failed to follow through. The father and paternal grandmother of the child had provided care for X.N. from his birth due to appellant's instability. Appellant began verbalizing threats to take the child from father's home, and appellee responded by filing a complaint on August 27, 2013, alleging that X.N. was dependent or neglected. The complaint requested that X.N. be placed in the temporary custody of appellee, or in the alternative that legal custody be awarded to D.N. At a shelter care hearing, the child was placed in the temporary custody of D.N., with an order of protective supervision to appellee.

{¶3} Both parents stipulated to a finding of dependency at a hearing held on November 13, 2013. The court continued temporary custody with the father, with protective supervision to appellee. A case plan was approved and adopted as to both parents. The case plan required appellant to complete a parenting evaluation, obtain and maintain stable housing, and consistently engage in counseling and psychiatric

monitoring. Both parents were required to receive parenting instructing through Goodwill Parenting.

{¶4} Appellee filed a motion to change legal custody to the father on June 20, 2014. The court held an evidentiary hearing on the motion on August 13, 2014. The case worker testified at the hearing that appellant had partially complied with her case plan, but had been late starting and had not completed all requirements. The case worker testified that appellant was not yet in a position to have the child returned to her care, and that the child was doing well living with his father. The evidence further reflected that father was encouraging appellant to remain an active part of X.N.'s life.

{¶5} The court granted the motion, awarding legal custody of X.N. to his natural father, D.N. Appellant assigns a single error:

{¶6} "THE TRIAL COURT ERRED IN GRANTING CUSTODY OF THE MINOR CHILD TO FATHER."

{¶7} Appellant argues that the judgment is against the weight of the evidence, as the award of custody was not in the best interest of the child. She argues that she was in compliance or was pursuing compliance with her case plan.

{¶8} On appeal, we will not reverse an award of legal custody absent an abuse of discretion. *In re Nice*, 141 Ohio App.3d 445, 455, 751 N.E.2d 552, 2001–Ohio–3214. Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). If the court's decision regarding legal custody is not supported by competent, credible evidence, then it is unreasonable and we may reverse the decision. *Nice*, 141 Ohio App.3d at 455, 751

N.E.2d 552. The trial court's standard of review is not clear and convincing evidence, as it is in a permanent custody proceeding, but is merely a preponderance of the evidence. *Id.*

{¶9} Pursuant to R.C. 2151.353(A), when a child is adjudicated dependent, neglected, or abused, the juvenile court may award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child. In doing so, the juvenile court shall consider the best interest of the child. R.C. 2151.42(A).

{¶10} The caseworker testified that she had been working with the family for over a year. Appellant did not complete the requested parenting evaluation for five months. She failed to participate in mental health services until November of 2013. As of the trial date in August of 2014, she had not consistently attended sessions with her mental health provider, and had been terminated for repeatedly missing appointments. Appellant re-engaged with counseling just prior to the trial date. She completed Goodwill Parenting, but concerns remained with her ability to understand and provide nutritious food for X.N. While father permitted liberal visitation with the child, appellant failed to visit consistently. At times she would visit multiple times in one week, but she would frequently fail to visit for two or three weeks at a time. Appellant was not employed, although she had recently interviewed with Walmart. She lived in Stark Metro housing, but had jeopardized her housing by allowing people to move in and out of her unit. Further, she had difficulty paying the rent of \$25.00 per month.

{¶11} The caseworker further testified that the father had stable housing throughout the case. The child had resided with father and the paternal grandmother

since April of 2013. He had provided for all the child's financial, medical and physical needs. He completed Goodwill Parenting, and was employed.

{¶12} Based on the evidence presented at the hearing, the court did not abuse its discretion in placing X.N. in the legal custody of D.N., the child's father.

{¶13} The assignment of error is overruled. The judgment of the Stark County Common Pleas Court, Juvenile Division, is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.