

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

J. W.

MINOR CHILD

JUDGES:

Hon. W. Scott Gwin, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 2015 CA 00070

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Juvenile Division, Case No. 2013
JCV 00894

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 27, 2015

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Wise, J.

{¶1} Appellant Nicholas Detore ("Father") appeals the March 31, 2015 Judgment Entry entered by the Stark County Court of Common Pleas, Juvenile Division, which terminated his parental rights, privileges, and responsibilities with respect to his minor child, and granted permanent custody of the child to Appellee Stark County Department of Job and Family Services ("SCJFS").

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant is the Father of the minor child, J.W., born February 28, 2005. T. at 5.

{¶3} On August 29, 2013, Stark County Job and Family Services (hereinafter "SCJFS" or "the agency") caused a Complaint to be filed under case number 2013 JCV 00894 regarding the child. The complaint alleged that the child was Dependent and/or Neglected due to the condition of the child's home environment with his Father, Father's failure to provide prescribed medication to the child, Father's lack of employment and income, and Father's maltreatment of the child under the guise of questionable parenting practices. The Complaint prayed for temporary custody of the child to be vested with SCJFS. T. at 6.

{¶4} On August 29, 2013, an emergency shelter care hearing was conducted. At that hearing, probable cause was found to exist necessitating the removal of the child from his Father's custody. The child was ordered into the emergency temporary custody of SCJFS. The matter was set for trial on November 20, 2013.

{¶5} On November 20, 2013, at trial, Father stipulated to a finding of Dependency. Mother was served with the Complaint and the trial date; however, she

failed to appear for such. Prima facie testimony was presented as to Mother's interests. The child was found to be a Dependent child. T. at 6. The court proceeded immediately to Disposition. The child was ordered into the temporary custody of SCJFS. The court found that reasonable efforts were made to prevent the need for removal from Father's home. A case plan was approved and adopted by the court.

{¶16} On February 25, 2014, the court reviewed the case. The court reviewed the case plan and made the statutory findings that SCJFS had exercised reasonable efforts to finalize permanency planning for this child, and that compelling reasons existed to preclude a permanent custody filing at that time. Upon the motion of the child's Guardian Ad Litem, Father's visits with the child were temporarily suspended due to the child's response to the visits.

{¶17} On March 27, 2014, at the evidentiary hearing on the visitation issue, parties reached an agreement that Father's visits with his child would be suspended pending reinstatement of the visits upon the recommendation of the child's mental health counselor. The matter was set for further review on June 4, 2014.

{¶18} On June 4, 2014, the court reviewed the child's foster placement. The Court ordered the agency to investigate alternative placement for the child.

{¶19} On July 22, 2014, the court reviewed the case. The court reviewed the case plan and made the statutory findings that SCJFS had exercised reasonable efforts to finalize permanency planning for this child, and that compelling reasons existed to preclude a permanent custody filing at that time. The court extended temporary custody of the child with the agency to February 28, 2015 as to Father's interests.

{¶10} On September 4, 2014, the court extended temporary custody of the child with the agency to February 28, 2015 as to Mother's interests.

{¶11} On December 29, 2014, the agency caused to be filed a Motion for Permanent Custody of the child.

{¶12} On January 20, 2015, the court reviewed the case. The court reviewed the case plan, and made the statutory finding that SCJFS had exercised reasonable efforts to finalize permanency planning for this child. The court did not find that compelling reasons existed which precluded a request for permanent custody.

{¶13} On March 26, 2014, the court heard the following evidence on the Motion for Permanent Custody:

{¶14} During the case, a case plan was developed for Appellant. T. at 6. The case plan required that Appellant complete a parenting evaluation at Northeast Ohio Behavioral Health, complete an anger management evaluation through Melymbrosia, engage in individual counseling services, complete a comprehensive psychiatric assessment, complete Intensive Parent Child Interaction counseling through Northeast Ohio Behavioral Health, complete a drug/alcohol assessment at Quest, obtain and maintain stable and appropriate housing, obtain and maintain stable income, complete Goodwill parenting education classes, and complete the Goodwill Home-Based program if the child was ever transitioned back into Appellant's home. T. at 7-8.

{¶15} Testimony was provided by SCJFS showing that Appellant completed a parenting evaluation at Northeast Ohio Behavioral Health. T. at 7. The evaluator, Dr. Aimee Thomas, testified that Appellant had a number of personality traits which presented concerns with his ability to appropriately parent and bond with his son. T. at

55-60. Specifically, the evaluator described Appellant as "apathetic" and "quite narcissistic". T. at 57. Appellant claimed to be "...an expert in the fields of herbal medicine, psychology and law...friends with people who were retired judges and federal agents." T. at 57. The evaluator noted concerns with the bond between Appellant and his son, noting that "...individuals that present with a narcissistic personality disorder or narcissistic characteristics are typically more wrapped up in their own needs and they disregard the feelings of other." T. at 58. The evaluator noted further testing completed by Appellant indicated that Appellant "...recognized that there wasn't a strong attachment with he and his son." T. at 58. The evaluator made many additional recommendations for necessary services for Appellant, and such recommendations were incorporated into the case plan. T. at 8, 60-62. The evaluator specifically spoke to Appellant's chronic lack of stability, and the child's overwhelming need for such stability in his life in light of the historic abuse he had suffered. T. at 63-64. The evaluator noted that the "...prognosis was poor, based on the length and duration of chronic instability, the best predictor of future behaviors is past behaviors." T. at 59.

{¶16} Appellant did complete an anger management evaluation through Melymbrosia, and no immediate recommendations for treatment were made by that service provider. T. at 14.

{¶17} Appellant completed only one individual counseling session and did not return for additional services offered by this or any other provider. T. at 13-14. Testimony was presented showing that Appellant would need long-term therapeutic services to compensate for his narcissistic personality traits, and other personality defects. T. at 62, 65-68.

{¶18} Appellant did not complete a psychiatric assessment as recommended in the parenting evaluation, and incorporated into the case plan. T. at 14. Appellant acknowledged failure to complete this case plan objective. T. at 88.

{¶19} Appellant did not complete the Intensive Parent Child Intervention counseling recommended by the parenting evaluator, and incorporated into the case plan. T. at 13.

{¶20} Appellant was also to complete drug and alcohol assessment at Quest. T. at 8. Appellant did complete such assessment, and no recommendations for further treatment were made by the service provider. T. at 8.

{¶21} Appellant did not obtain and maintain stable housing during the lifetime of the SCJFS case. T. at 8, 56. Appellant moved multiple times and exhibited a period of homelessness during the pendency of the case. T. at 8, 56. Appellant moved in the midst of the case to the State of Pennsylvania; thereby moving further away from case plan providers and his child. T. at 8. Appellant claimed to have stable housing as a renter at the time of the permanent custody hearing; however, Appellant had not provided SCJFS with a copy of any lease agreement or other assurance that he does in fact have the housing he purports. T. at 8-9, 41- 42. Appellant acknowledged that he had only resided in his current apartment for five months, and that prior to that he had resided with a cousin in a trailer for four months. T. at 71.

{¶22} Appellant did not obtain or maintain stable employment during the lifetime of the SCJFS case. T. at 10, 56. Appellant demonstrated no source of income until December 2014, at which time he became a subcontractor for a roadside assistance company in Pennsylvania. T. at 10. Appellant reported that he earned \$8.00 per call. T.

at 10. This was considered not to be steady or stable employment, as Appellant's employment was subject to huge variability depending upon the number of calls received each day. T. at 10, 42-43.

{¶23} Appellant did complete Goodwill parenting education classes. T. at 11. It is noteworthy; however, that Appellant completed only the class portion of the program, and not the portion of the program where an assessment of the application of learned information could be observed, as Appellant failed to exercise visitation with his son when offered the opportunity to do so. T. at 11-12, 36-38. The Goodwill parenting instructors made additional recommendations for Appellant which were also incorporated into the case plan. T. at 11.

{¶24} There were additional case plan services for the child due to his mental health diagnoses of Reactive Attachment Disorder, Attention Deficit/Hyperactivity Disorder, Oppositional Defiance Disorder, and Post-Traumatic Stress Disorder. T. at 16. The child was recommended to complete trauma-based counseling services which the agency was facilitating. T. at 16-17.

{¶25} According to the child and his mental health providers, the child's mental health issues were at least partly attributable to the type of care the child received while in the custody of Appellant. T. at 17, 32-35 39-41. Appellant acknowledged under cross-examination that he knew his child was being mistreated, and that he himself mistreated his child under the guise of "discipline". T. at 91-92.

{¶26} SCJFS did not view Appellant's efforts as compliant with case plan objectives, despite two extensions of temporary custody in which to do so. T. at 22.

{¶27} Appellant failed to visit with his child for a period of time in excess of 90 days. T. at 21. For a period of time, Appellant was unable to visit with the child due to a restrictive order made by the Court in February 2014. T. at 18, 47. That order was modified to allow for therapeutic visits between Appellant and his child in March 2014. T. at 18, 48-49. Appellant chose to attend only three therapeutic visits with his son, then chose to discontinue those visits, and moved out of State. T. at 18-19, 38-39. By way of explanation, Appellant testified that he moved to Pennsylvania to be near family; only reluctantly acknowledging that he left the most important member of his family, his son, behind, T. at 95-96. Appellant last visited with his child on July 23, 2014. T. at 20, 96, 106. Despite testifying that he travelled across the country on a monthly basis to visit his other children, Appellant acknowledged that he was passive as it came to his interactions with his son. T. at 94-97. Appellant admitted that he did not make contact with SCJFS to even inquire as to his son's well-being for a period of approximately eight months. T. at 20-21, 94-97. Appellant did not "...send food, clothing, birthday cards..." for the benefit of his son. T. at 22. Appellant has not expressed or demonstrated a commitment to his child in a lengthy period of time. T. at 21-22.

{¶28} The child has been in the temporary custody of the agency continuously since November 20, 2013; a period of time in excess of the twelve of the previous twenty-two months. T. at 6.

{¶29} During the best interest phase of the permanent custody hearing, SCJFS presented testimony detailing the child's plethora of mental health diagnoses; which included Reactive Attachment Disorder, Attention Deficit Disorder, Oppositional Defiance Disorder and Post-Traumatic Stress Disorder. T. at 102-103. Testimony was

presented showing that the agency had continued to meet the child's needs, while seeking permanency for him. T. at 103. Testimony was also presented that Appellant had not had any contact with his son since July 23, 2014. T. at 106. As such, the witness opined that the benefit of permanency for the child would outweigh the harm caused to the child by termination of Appellant's parental rights. T. at 107. Appellant chose not to provide any testimony during the best interest portion of the trial. T. at 108.

{¶30} The trial court also considered the report of the Guardian Ad Litem, Attorney Jeanne White, filed on January 20, 2015, wherein she recommended that Permanent Custody would be in the best interest of J.W. T. at 3.

{¶31} On March 31, 2015, the trial court journalized its findings of fact and conclusions of law which terminated the parental rights of the child's Mother and Father's parental rights, privileges, and responsibilities, and granted permanent custody of J.W. to SCJFS. The trial court found J.W. could not and should not be placed with Father within a reasonable time, and it was in the child's best interest to grant permanent custody to SCJFS.

{¶32} It is from this judgment entry Father appeals, assigning the following errors:

ASSIGNMENT OF ERRORS

{¶33} "I. THE TRIAL COURT'S JUDGMENT 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.

{¶34} II. THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION TO EXTEND TEMPORARY CUSTODY FOR AN ADDITIONAL SIX MONTHS WAS IN ERROR.

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

{¶36} This case comes to us on the expedited calendar and shall be considered in compliance with App. R. 11.2(C).

I., III.

{¶37} We elect to address Father's First and Third Assignments of Error together. In his first assignment of error, Father maintains the trial court's finding J.W. could not be placed with him within a reasonable time was against the manifest weight and sufficiency of the evidence. In his third assignment of error, Father contends the trial court's finding an award of permanent custody was in the best interest of J.W. was against the manifest weight and sufficiency of the evidence

{¶38} 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*, Stark App. No. CA5758 (Feb. 10, 1982). 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.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶39} 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.

{¶40} 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.

{¶41} 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.

{¶42} 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.

{¶43} If the child is not abandoned or orphaned, 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.

{¶44} As set forth in our Statement of the Facts and Case, *supra*, we find there was competent, credible evidence Father failed to remedy the problems which caused the removal of J.W. from the home. The trial court found by clear and convincing evidence that J.W. had been in the temporary custody of SCJFS for 12 or more months of a consecutive 22 month period; that Father had abandoned the child by failing to visit him for a period in excess of 90 days; and, that Father had failed to remedy the condition which caused the child to be placed in the care and custody of SCJFS.

{¶45} With respect to the best interest finding, the evidence revealed J.W. has only a minimal bond with Father and no bond with Mother. J.W. is doing well in foster

care and is bonded with the foster parents. J.W. is currently on medication and is in counseling for his mental health issues. J.W. needs stability, routine and permanency in his life. Additionally, the guardian ad litem filed a report wherein she opined the best interest of J.W. would be served by granting permanent custody to SCJFS.

{¶46} Based upon the foregoing, we find the trial court's findings J.W. could not be placed with Father within a reasonable time, and an award of permanent custody was in the child's best interest were not against the manifest weight of the evidence and were based upon sufficient evidence.

{¶47} Father's First and Third Assignments of Error are overruled.

II.

{¶48} In his Second Assignment of Error, Father asserts the trial court abused its discretion in denying his oral request for a six month extension of temporary custody. We disagree.

{¶49} A trial court's decision to grant or deny an extension of temporary custody is a discretionary one. See R.C. §2151.415(D)(1) and (2).

{¶50} Pursuant to R.C. §2151.415(D)(1), a trial court can extend temporary custody for six months only if it finds, by clear and convincing evidence, (1) that such an extension is in the best interests of the child, (2) that there has been significant progress on the case plan, and (3) that there is reasonable cause to believe that the child will be reunified with a parent or otherwise permanently placed within the period of extension. See *In re McNab*, 5th Dist. Nos. 2007 AP 11 0074, 2007 AP 11 0075, 2008–Ohio–1638.

{¶51} In the instant case, while Father had completed certain aspects of the case plan, he failed to complete, failed to initiate, or failed to meaningfully complete other aspects.

{¶52} The trial court heard testimony that Father failed to complete individual counseling, and failed to complete a psychiatric assessment or Intensive Parent Child Interaction counseling. Testimony was also presented that Appellant's housing and employment were unstable in nature. Further, evidence was presented that Father failed to have any contact with J.W. following his July 23, 2014, visit, resulting in an eight (8) month absence.

{¶53} We find Father has failed to demonstrate an abuse of discretion by the trial court in denying the motion for a six-month extension. As set forth more fully above, the evidence before the trial court supports the conclusion that an extension of temporary custody was not in J.W.'s best interests, but, rather, his interests were best served by award of legal custody to SCJFS.

{¶54} Father's Second Assignment of Error is overruled.

{¶55} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Stark County, Ohio, is affirmed.

By: Wise, J.
Gwin, P. J., and
Farmer, J., concur.

JWW/d 0713