

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

BUTLER/HAIRSTON CHILDREN

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 2015CA00080

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Family Court Division,
Case No. 2013JCV00135

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 24, 2015

APPEARANCES:

For Appellant

LAWRENCE SPOLJARIC
Stark County Public Defender's Office
201 Cleveland Ave SW
Suite 104
Canton, Ohio 44702

For Appellee

BRANDON J. WALTENBAUGH
Stark County Job/Family Services
300 Market Ave North
Canton, Ohio 44702

Hoffman, P.J.

{¶1} Appellant Marion Hairston (“Father”) appeals the April 16, 2015 Judgment Entry entered by the Stark County Court of Common Pleas, Family Court Division, which terminated his parental rights, privileges, and responsibilities with respect to two of his minor children and granted permanent custody of the children to Appellee Stark County Department of Job and Family Services (“SCDJFS”).

STATEMENT OF THE CASE AND FACTS

{¶2} On February 11, 2013, SCDJFS filed a complaint, alleging M.H. (dob 12/04/2002), D.H. (dob 09/22/2007), and four siblings were dependent and neglected children and seeking temporary custody of them.¹ Father is the biological father of M.H. and D.H. The trial court conducted an emergency shelter care hearing on the same day and awarded emergency temporary custody of the children to SCDJFS.

{¶3} On March 6, 2013, Father stipulated to a finding of dependency for the children. SCDJFS agreed to delete the allegations of neglect. Father agreed to the award of temporary custody of the children to SCDJFS as well as to the approval and adoption of the case plan. Following a review hearing on July 30, 2013, the trial court maintained the status quo.

{¶4} SCDJFS filed a motion to change legal custody of M.H. and D.H. to Father on December 11, 2013. At the second review hearing on January 3, 2014, the trial court set the matter for evidentiary hearing on the motion for change of legal custody.

¹ This Appeal only involves M.H. and D.H.; therefore, we shall only include facts relative to them unless necessary to do otherwise.

SCDJFS withdrew its motion for change of legal custody on April 28, 2014. Both parties stipulated to an extension of temporary custody.

{¶5} Following a review hearing on June 27, 2014, the trial court again maintained the status quo. SCDJFS filed a second motion to change legal custody to Father on October 14, 2014, but subsequently amended the motion on February 2, 2015, to a motion for permanent custody.

{¶6} The trial court conducted a hearing on the motion for permanent custody on April 14, 2015. Father did not appear at the hearing.

{¶7} The testimony adduced at the hearing revealed Father had failed to satisfactorily complete his case plan. The case plan required Father to undergo a drug and alcohol assessment and follow all recommendations; complete a parenting evaluation and follow all recommendations; maintain stable housing and employment; complete anger management classes; attend Goodwill parenting; and submit to random drug screens.

{¶8} Father completed his parenting evaluation. The evaluator recommended Father complete Goodwill parenting classes and engage in the Goodwill home-based parenting education program. Although Father engaged in the services offered through Goodwill, Father did not successfully complete his program goals. Father could not advance past the basic needs of food and clothing for the children. Father did not maintain stable housing and was evicted during the proceedings. The children were placed with Father, however, they were removed in August, 2014, when SCDJFS learned the children were sleeping on hardwood floors and often did not have food to eat.

{¶9} Father did not have gainful employment during the case. Father was recently employed with Shearers, but quit the job because he did not like it. Father was sanctioned by his jobs program because the position at Shearers was the fourth job Father had lost during the pendency of the matter. Father claimed he was working in construction and car detailing, but the social worker was unable to confirm the employment.

{¶10} Father's parental rights with respect to another of his children had been terminated in July, 2014.

{¶11} Via Judgment Entry filed April 16, 2015, the trial court terminated Father's parental rights, privileges, and responsibilities, and granted permanent custody of M.H. and D.H. to SCDJFS. The trial court found M.H. and D.H. cannot and should not be placed with Father within a reasonable time, and it was in the children's best interest to grant permanent custody to SCDJFS.

{¶12} It is from this judgment entry Father appeals, raising the following assignments of error:

{¶13} "I. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF THE CHILDREN TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.

{¶14} "A. THE TRIAL COURT'S FINDING THAT THE APPELLANT ABANDONED HIS MINOR CHILD WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE AND THE TRIAL COURT ERRED BY PROCEEDING TO BEST INTERESTS BASED UPON ABANDONMENT.

{¶15} "II. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF THE CHILDREN TO THE STARK DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE MINOR CHILDREN CANNOT OR SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE TIME WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶16} "III. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF THE CHILDREN TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE BEST INTERESTS OF THE MINOR CHILDREN WOULD BE SERVED BY GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

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

I

{¶18} In his first assignment of error, Father contends the trial court erred in finding he had abandoned his minor children, and erred in proceeding to the best interests portion of the hearing based upon abandonment.

{¶19} A review of the record reveals the trial court never made a finding of abandonment with respect to Father. The trial court made the finding of abandonment with respect to the children's mother and grandmother.

{¶20} Father's first assignment of error is overruled.

II, III

{¶21} We elect to address Father's second and third assignments of error together. In his second assignment of error, Father maintains the trial court's finding M.H. and D.H. 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 children's best interest was against the manifest weight and sufficiency of the evidence.

{¶22} 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).

{¶23} 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.

{¶24} 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.

{¶25} 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.

{¶26} 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.

{¶27} 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.

{¶28} 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 the children from the home. Father failed to make any meaningful progress on his case plan.

{¶29} With respect to the best interest finding, the evidence revealed M.H. and D.H. are in foster care with two other siblings, and are doing well. The foster family is in the process of adopting the two other siblings, and are interested in adopting M.H. and D.H. The children's emotional and educational needs are being met. The children are bonded with their foster parents and their other siblings.

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

{¶31} Father's second and third assignments of error are overruled.

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

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur