

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

In the matter of: Bradley John B.  
and Zach B., III

Court of Appeals Nos. H-03-037  
H-03-041

Trial Court Nos. DP-2001-00012  
DP-2001-00013

**DECISION AND JUDGMENT ENTRY**

Decided: March 19, 2004

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Thomas J. Stoll, for appellant.

Devon C. Harmon, for appellee.

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HANDWORK, P.J.

{¶1} This is an appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, terminating the parental rights of appellant, Zack B., Jr., and awarding permanent custody of his children, Bradley John B. and Zack B., III, to appellee, Huron County Department of Job and Family Services ("HCDJFS"). For the reasons stated herein, this court affirms the judgment of the trial court.

{¶2} The following facts are relevant to this appeal. Zack was born on May 23, 1992, and Bradley was born on February 2, 1994, to appellant and Karen S.<sup>1</sup> Appellant and Karen S. are not married. On February 14, 2001, HCDJFS filed a complaint alleging that Bradley and Zack were dependent children. In the complaint, HCDJFS stated that the agency received a complaint indicating that the children were being neglected; that the house smelled of urine and there were holes in the exterior walls and doors; and that there were fleas and days of unwashed dishes. On February 15, 2001, a guardian ad litem ("GAL") was appointed for the children. The children were adjudicated dependent at a hearing on May 9, 2001. At a hearing on May 31, 2001, the children were placed in the custody of HCDJFS.

{¶3} Appellant filed a motion for legal custody on January 30, 2003. HCDJFS filed a motion for permanent custody on February 20, 2003.<sup>2</sup> Trial on both motions was held on June 18, 2003 and September 5, 2003. On October 7, 2003, the trial court issued its judgment entry granting the motion for permanent custody filed by HCDJFS and denying appellant's motion. Appellant filed a timely notice of appeal and sets forth the following two assignments of error:

{¶4} "I. THE TRIAL COURT ERRED IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WAS IN THE CHILDREN'S BEST INTEREST

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<sup>1</sup>On November 6, 2003, Karen filed a notice of appeal. On November 17, 2003, this court ordered her appeal consolidated with appellant's appeal. However, as Karen has not filed a brief in this appeal, only evidence germane to appellant will be included.

<sup>2</sup>HCDJFS had filed a prior motion for permanent custody but had withdrawn the motion and requested six month extension of the case for additional time to allow the parents to attempt compliance with the case plan.

TO GRANT PERMANENT CUSTODY TO THE HURON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.

{¶5} “II. THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO THE HURON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WHERE THE FATHER DEMONSTRATED A BOND WITH THE CHILDREN AND ADOPTION WOULD LIKELY RESULT IN THE CHILDREN BEING SEPARATED.”

{¶6} On the first day of trial, Julie Cashen, Zack’s therapist since February 2002, testified that Zack presented with problems or behaviors centered on separation from his parents, such as bedwetting, some aggression toward his younger brother and lying and stealing. In addition, Zack appeared somewhat parentified, meaning that he had a desire to do a lot of caretaking of his younger brother. Cashen stated that Zack’s behaviors were consistent with being raised in an environment in which there were not appropriate boundaries and rules and in which traumatic events such as mental illness, suicidal or drug and alcohol concerns were being witnessed. Cashen’s observations of four separate visitation sessions confirmed her initial hypothesis as to Zack’s issues. She is working with Zack on identifying and expressing his emotions. Cashen testified that in the first year she saw Zack, he was functioning well in one foster home but then he had to switch and she then saw regressive behaviors due to the trauma of moving. Cashen also testified that Zack, due to his intelligence, is frustrated because he is not getting what he needs from his parents.

{¶7} The GAL for the children since February 2001, testified that the initial plan was to help the parents clean up their home, teach the parents money management and insure the parents had adequate resources and the children attended school. However, after the mother was hospitalized due to suicide attempts and appellant did not receive his medications for schizophrenia because he had been drinking, the children were removed. The plan was for reunification; specifically, appellant was to stop drinking so that he could receive his medications; attend Alcoholics Anonymous (“AA”) meetings once per week; and keep the house in a condition so the children could return. The GAL testified that the parents had attended approximately three quarters of the visits with the children. The parents’ explanation for not attending all visits is that they do not have the money for gas for the car although they admit they spend \$350 per month on cigarettes as they smoke approximately five packages of cigarettes per day.

{¶8} The GAL also testified that appellant has not attended AA meetings weekly, has continued to drink and his drinking has interfered with his medication. The GAL testified that the parents had made improvements in regard to the condition of the home and would not say the home was unsafe. The GAL recommended that HCDJFS be granted custody of the children and an open adoption arranged so that the children could continue to have contact with their parents and each other. The GAL testified that returning Zack to his parents would not be the best placement for him because when he is with his parents, he is angry and defiant and his parents are not stable and consistent in their discipline. Furthermore, the GAL testified that his parents are not managing their resources well enough to meet his physical, medical and educational needs.

{¶9} In her report and recommendation, the GAL stated that even though the parents have completed parenting classes, they are not able to set boundaries with the children so that they can be safe and excel. The GAL noted that the parents' mental health conditions interfere with the successful completion of the case plan objective.

{¶10} Linda Weilmann, the foster mother for Zack, testified that he came to her home on January 31, a little over four months before the day of the trial. Linda testified that Zack is well-behaved although his social skills were not well developed in that he could not communicate with people and would be rude to people. Linda also testified that Zack would regress for at least two days after visits with his parents in that he would be disruptive with his behavior and try to boss Linda and tell her what to do. Linda also testified that after a couple of days, Zack is back to normal in that he acts as the child and Linda and her husband the parents. Zack is doing well in school. She testified that they are willing to adopt Zack.

{¶11} Emma Yates, Bradley's residential therapist at Children's Aid Society ("CSA") in Cleveland, testified that she meets with him at least once per week for individual therapy. She testified that Bradley, now ten, presented with sexualized behaviors, acting out, oppositional behaviors and depression when admitted to CSA in February of 2003. Yates testified that Bradley told her that he was sexually abused when he was five years old and still residing with his parents; that he observed his parents having sex; and that he had watched pornographic movies. Bradley's sexualized behaviors have diminished since his admission to CSA. Yates testified that Bradley would need to remain at CSA for approximately one year. On cross-examination, Yates admitted that Bradley is

not a good candidate for adoption because of his attachment to his parents but stated she did not have enough information to make a judgment as to whether Bradley could be reunified with his parents.

{¶12} Pam Barron, formerly a case manager from Counseling Center, Firelands Counseling and Recovery, testified that she worked with appellant and Karen on their finances, helping them with their payee, getting bills paid and their car repaired for approximately one year. Barron explained that the payee gets appellant and Karen's money and is in charge of paying their bills and meeting their financial responsibilities. Appellant and Karen would be given money weekly for groceries, cigarettes and gasoline.

{¶13} Appellant was called on cross-examination. Appellant testified that his source of income is Social Security disability; that his disability is schizophrenia; that he is on medication for schizophrenia; and that he does not do well when he goes off his medication for schizophrenia. Appellant also testified that he is not currently employed; that he receives \$50-60 as a weekly allowance from the payee; that he smokes two and a half to three packs of cigarettes daily; and that he has borrowed money from Zack for cigarettes when he does not have enough allowance money. Appellant admitted that during their last visit, he had problems with Zack and Bradley in that the boys were beating each other up and breaking each other's toys. Appellant also admitted that he very often cannot go places because he does not have gas in his car and does not have money. Appellant testified that he is in counseling and has gone for four sessions. Appellant admitted that although the court ordered him to attend weekly AA meetings, he has only gone 10-12

times in a year even though the meetings are held in the same trailer park he lives in; he admitted he still drinks.

{¶14} Susan Stockard, the ongoing social worker for the family, testified that she was assigned the case in mid-May 2001. She testified that the agency became involved following a complaint that the boys were being neglected; that there was no food in the house; that the house was filthy and in disarray; that Karen was sleeping all day; and that the children's needs were not being met and they were not going to school. Stockard testified that the dirty home issue was remedied when Firelands Counseling Center and HCDJFS had the carpet removed and replaced and the house flea bombed. Stockard testified that initial services for the family were to make the home sanitary, parenting classes for both, AA meetings and counseling for appellant and for Karen to get a payee and attend outpatient therapy at a partial hospitalization program. Appellant did not attend AA meetings, parenting classes or counseling and Karen did not attend outpatient therapy. Based upon the parents' non-compliance with the case plan, the children were placed in the custody of HCDJFS following a hearing on May 31, 2001.

{¶15} In regard to appellant and the boys, Stockard testified that appellant told her he was not sure how to handle their behavior during their overnight visits. She also testified that in November appellant told her that he had missed his medication and was feeling violent and did not think he should have the boys over the Thanksgiving vacation. Stockard also testified that she observed visitation between appellant and the boys and noticed Zack, then nine years old, "parent" appellant in that Zack would ask about appellant's attendance at AA meetings and his drinking and Zack told appellant that in

order for the children to come home, appellant and Karen had to get it together and not to show up drunk in front of the judge. Although more frequent visitation was available on request, appellant rarely took advantage of this; additionally the parents would often not call to arrange the regular weekly visits or call too late to arrange visitation. Stockard observed that appellant and Karen had a difficult time utilizing any of the parenting techniques from the court-ordered parenting classes. In addition, although ordered in May 2001, they did not attend parenting classes until November 2002.

{¶16} In regard to appellant's attendance at AA meetings, Stockard testified that although appellant was ordered to attend weekly meetings, she has received only some attendance reports. In particular, since September 2001, she had not received an attendance report until approximately one month before the trial. In regard to appellant's participation in counseling ordered in April 2001, Stockard testified that appellant did not begin counseling until the spring of 2003. Stockard also testified that although Bradley's sexual abuse occurred in 1998 while he was with his parents, they were not proactive in getting help for him during that time period. Stockard testified that one part of the parents' case plan that has not been met is learning to recognize family problems and dealing with them.

{¶17} Stockard testified that there are no family members available who could take custody of the children. Stockard testified that both boys are adoptable and that an open adoption would be available so that the boys could still visit with their parents and each other.

{¶18} The second day of trial was September 5, 2003. Appellant's mother, Margaret B., testified that appellant's relationship with Bradley is close and loving and that



Zack likes to play games with appellant. She was not aware that Bradley had been sexually abused. She testified that although Bradley has some problems controlling himself and acting out, she would be able to control him. She has not seen Zack since April or May and described him as “standoffish.”

{¶19} During his testimony, appellant admitted that he had a drinking problem, has been diagnosed as schizophrenic and takes medication for his schizophrenia. He testified that he attended some AA meetings; received a certificate for completing parenting classes; and that the home had been cleaned, carpet replaced and the furnace fixed. In regard to visitation, appellant testified that he did not visit Bradley often when he was in Columbus but does visit every two weeks now that Bradley is in Cleveland; appellant visits Zack once a week. He does not work but does “odd jobs” such as cutting grass; his source of income is Social Security disability.

{¶20} On cross-examination, appellant admitted that he is still drinking. Appellant also admitted that he and Karen regularly run out of food at the end of the month and go to a church for food; he also admitted that he does not always take his medication for schizophrenia even though he knows that it is important for him to take his medication on a daily basis. Appellant admitted that he has trouble controlling Zack and Bradley’s teenage friends but stated that it was not his responsibility to keep the teenagers away from his house. He also admitted that Zack and Bradley are doing better now than they ever have before.

{¶21} On October 7, 2003, the trial court granted permanent custody of the children to HCDJFS. In its judgment entry, the trial judge included extensive findings of facts, facts

not only from the trial but also from the court's in camera interview with the children. Appellant filed a timely notice of appeal.

{¶22} In his first assignment of error, appellant argues that the trial court erred in finding by clear and convincing evidence that granting permanent custody to HCDJFS was in the children's best interest. This court finds no merit in this assignment of error.

{¶23} In *In the Matter of Baby Girl Doe*, 149 Ohio App.3d 717, 2002 Ohio 4470 at ¶ 89, this court ruled that:

{¶24} "On appeal from an order terminating parental rights, an appellate court will not reverse the trial court's judgment if, upon a review of the record, it determines that the trial court had sufficient evidence to satisfy the clear and convincing standard. *In re Wise* (1994), 96 Ohio App.3d 619, 626. The 'clear and convincing evidence' standard is a higher degree of proof than the 'preponderance of the evidence' standard generally utilized in civil cases but is less stringent than the 'beyond a reasonable doubt' standard used in criminal cases. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74. An appellate court will not substitute its own judgment for that of a trial court applying a 'clear and convincing evidence' standard where some competent and credible evidence supports the trial court's factual findings. *Id.*; *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus. (Parallel citations omitted.)"

{¶25} On a motion for permanent custody based upon R.C. 2151.413, the court must "determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion." R.C. 2151.414(A)(1) . The trial court must find by clear and convincing evidence that: 1) "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 2) that the agency has had temporary custody of the child for "twelve or more months of a consecutive twenty-two month period." R.C. 2151.414(B)(1) .

{¶26} "For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home." R.C. 2151.414(B)(1).

{¶27} The standard for determining the best interest of the child in permanent custody hearings is set by R.C. 2151.414(D).<sup>3</sup> The major factors to be considered include,

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<sup>3</sup>R.C. 2151.414(D) provides:

"(D) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 [2151.35.3] or division (C) of section 2151.415 [2151.41.5] of the Revised Code, the court shall 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 caregivers 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, 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 ending on or after March 18, 1999;

(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;

without limitation, the relationship of the child with others in his life; the child's wishes; how long the child has spent in custody; and the need for secure placement. See R.C. 2151.414(D) (1) through (4).

{¶28} In arguing that awarding permanent custody to HCDJFS was not in the children's best interest, appellant cites factors from R.C. 2151.414(D) and refers to specific findings of fact and testimony in support of these factors. However, there are other findings of fact and testimony that support the trial court's decision that it was in the children's best interest to award permanent custody to HCDJFS. In particular, during the in camera interview, neither child expressed a desire to reside with their parents and Zack specifically expressed an interest in being adopted by his current foster parents. The trial court also noted that it has taken the parents nearly two years to begin the individual counseling ordered in the original case plan. Furthermore, appellant has stated that he cannot handle the children and admits that the children are doing better now than they ever have before.

{¶29} The record supports the trial court's decision that permanent custody to HCDJFS was in the children's best interest. As set forth above, the witnesses provided clear and convincing evidence that permanent custody was in the children's best interest.

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(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home."

{¶30} Accordingly, appellant's first assignment of error is found not well-taken.

{¶31} In his second assignment of error, appellant argues that the trial court erred in granting permanent custody to HCDJFS when appellant demonstrated a bond with the children and adoption would likely result in the children being separated. This court finds no merit in this assignment of error.

{¶32} Appellant argues that a Planned Permanent Living Arrangement (“PPLA”), previously known as long term foster care, would be in the best interest of the children. In support of this PPLA argument, appellant cites *In re Tanker* (2001), 142 Ohio App.3d 159 and *In the Matter of Bender* (Sept. 27, 1984), 10<sup>th</sup> Dist. Nos. 83AP-919, 83AP-920, 83AP-921, 83AP-922. However, both of these cases are distinguishable from the case sub judice. In *Tanker*, the appellate court noted that there was no disagreement that none of the four children was likely to be adopted; all of the children had special needs; and had been in a PPLA for over six years at the time of the hearing. The court stated:

{¶33} “The case in a nutshell comes down to this: everyone agrees that the children are making progress in their current foster home and that they wish to remain together as a family, but the foster parents have no desire to adopt the children because of their advanced age, the lack of respite services that might be available to them as adoptive parents, and the lower subsidy they would receive as adoptive parents. The foster parents have expressed a desire to keep the children in foster care indefinitely. At this time the children wish to remain with the foster parents. Even the agency's witnesses agreed that the children have bonded to the foster parents and the foster home is the best place for the children. This is a

classic example where the use of P.P.L.A. is the common sense manner within which the best interests of the children are satisfied and the status quo is appropriately maintained.

{¶34} “With these undisputed facts the court had a choice- it could continue foster care or it could grant permanent custody to the agency. Granting permanent custody to the agency would almost surely ensure that the children would be separated. Because the children have emotional and physical needs, it would be difficult to place them individually, much less as a group. We have little difficulty finding that the court acted in the best interests of the children in continuing long-term foster care.” *Id.* at 167.

{¶35} The appellate court in *Bender*, in affirming the denial of a motion for permanent custody, cited testimony of the older three of five children. The children, between the ages of eight and eleven, testified that they did not want to be adopted if it meant that not seeing the father or siblings.

{¶36} In the case sub judice, the GAL recommended that HCDJFS be granted permanent custody of both children. During the in camera interview, neither child expressed a desire to reside with their parents and Zack specifically expressed an interest in being adopted by his current foster parents. Upon review of the evidence in this case, the trial court did not err in granting permanent custody to HCDJFS.

{¶37} Accordingly, appellant's second assignment of error is found not well-taken.

{¶38} On consideration whereof, the court finds that substantial justice has been done the party complaining, and the judgment of the Huron County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the court costs of this appeal.

JUDGMENT AFFIRMED.

Peter M. Handwork, P.J.

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JUDGE

Richard W. Knepper, J.

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JUDGE

Mark L. Pietrykowski, J.  
CONCUR.

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JUDGE