[Cite as *In re Joemiydie L.*, 2005-Ohio-537.]

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

In the matter of: Joemiyde L.
and Wonderful R.

Court of Appeals Nos. L-04-1109
L-04-1110

Trial Court Nos. JC-01-92548
JC-01-98236

DECISION AND JUDGMENT ENTRY

Decided: February 11, 2005

* * * * *

Jill E. Wolff, for appellant.

Dianne L. Keeler, for appellee.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that awarded legal custody of Joemiyde L. to her great aunt, Reyaba L., and legal custody of Wonderful R. to his aunt and uncle, William and Henrietta G. For the reasons that follow, this court affirms the judgment of the trial court. Appellant, Tomica B., mother of Joemiyde and Wonderful, sets for the following assignment of error:

{¶ 2} "THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING LEGAL CUSTODY OF JOEMIYDE L. TO REYABA [L.] AND GRANTING LEGAL CUSTODY OF WONDERFUL R. TO WILLIAM AND HENRIETTA [G.] AS THE DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 3} Before the birth of Joemiyde, three of appellant's children were placed in the permanent custody of the Lucas County Children Services Board ("LCCS"). Joemiyde was born in June, 1996. Following her birth, LCCS filed a complaint in dependency seeking temporary custody of Joemiyde based on appellant's "history of inadequate care of her children." When appellant failed to comply with the terms of the case plan, legal custody of Joemiyde was awarded to her paternal grandmother, Donna B. In January 2001, legal custody of Joemiyde was returned to appellant because grandmother no longer wanted to retain legal custody. On July 10, 2001, appellant contacted a LCCS caseworker and asked that she take Joemiyde because "she could no longer handle her." On July 11, 2001, after obtaining temporary, emergency custody of Joemiyde, LCCS filed a complaint alleging that Joemiyde was a dependent and neglected child. She was adjudicated dependent by the trial court on November 20, 2001(Case No. 01092548).

{¶ 4} On December 14, 2001, a juvenile court magistrate issued an ex parte order granting emergency shelter care of Wonderful (born in January, 2000) to LCCS based on appellant's history with her other children, her substance abuse problem and her violent

behavior towards other people. He was adjudicated dependent by the trial court on March 15, 2002 (Case No. 01098236).

{¶ 5} On October 17, 2002, appellant filed two motions seeking legal custody of Joemiyde and Wonderful. On November 25, 2002, LCCS filed a motion to extend temporary custody of Joemiyde and Wonderful. In the motion, LCCS stated "* * * there has been significant progress on the case plan [of the children] and there is reasonable cause to believe that the children will be reunited with his/her parents." The trial court granted LCCS's motion.

{¶ 6} On February 19, 2003, Aaron R., father of Wonderful, filed a motion for legal custody of Wonderful. On May 22, 2003, LCCS filed a motion to terminate temporary custody. Pursuant to R.C. 2151.353, LCCS alleged it would be in the best interest of the children to award legal custody of Joemiyde to Reyaba L. and legal custody of Wonderful to William and Henrietta G. A contested custody hearing for both children commenced on January 14, 2003.

{¶ 7} LCCS case worker Keely Gray testified she was assigned to appellant's case for two years. She testified that Joemiyde has been in the custody of Reyaba L. since August 2002. Joemiyde's alleged father, John L., contacted Gray and said he wanted his daughter to be placed with his aunt, Reyaba L. John L. is unable to care for his daughter as he is incarcerated. According to Gray, Joemiyde has significant behavioral problems which require medication and psychiatric help. Since being with Reyaba L., Joemiyde's behavioral problems have lessened somewhat in that Reyaba L. is

willing to work with her and see that she takes her medication. As for Wonderful, Gray testified that he has been with William and Henrietta G. for over a year and the placement has worked out well.

{¶ 8} Gray testified that she has concerns regarding appellant's living arrangement. This concern involves appellant's son, Lavelle. Lavelle is in the legal custody of his father but Gray testified that she has reason to believe Lavelle is frequently at appellant's house. This was disconcerting to Gray because Lavelle had previously sexually offended Joemiyde. Pursuant to her case plans, appellant was to receive substance abuse counseling, attend anger management classes and refrain from drinking alcohol. Gray testified that she has received ongoing reports throughout the case that appellant is drinking, although appellant only tested positive for alcohol once during the course of her treatment. Gray also testified that appellant has frequently made verbal threats to harm Gray. Finally, Gray testified that it would not be in the best interest of the children to reunify them with appellant.

{¶ 9} Reyaba L. testified that Joemiyde is difficult to handle, but she wants custody of her because she "love[s] her to death." Reyaba L. testified that Joemiyde is hyperactive, that she suffers from defiant disorder and sexually acts out. Reyaba L. explained that she can relate to Joemiyde's behavioral problems because she helped raise Joemiyde's father and he had similar behavioral problems. Joemiyde has told Reyaba L. that she has engaged in sexual activity with her brother Lavelle. Reyaba L. testified that in her opinion, Joemiyde "needs a lot of love and attention right now." She also testified

that if she received legal custody of Joemiyde, she would not have a problem with appellant coming to visit her daughter.

{¶ 10} Henrietta G. testified that three year-old Wonderful has lived most of his life with her and her husband, William G., and that they would like to have legal custody of him. She noted that appellant has made few attempts to contact Wonderful since he has been with them. She testified that Wonderful has special needs and that he must use a breathing machine twice a day. Henrietta G. testified that she is very concerned about Wonderful being with appellant because she knows that appellant frequents bars and gets in fights. She also testified that she did not want Wonderful to be around his brother, Lavelle, because Lavelle "sexually abuses kids." Henrietta G. testified that she was concerned because appellant told her Lavelle stays at her home on weekends.

{¶ 11} The children's guardian ad litem, Ruth Ormston, testified that appellant fails to take Lavelle's sexual abuse of Joemiyde seriously. She testified that Joemiyde has emotional problems for which she is receiving counseling and that Wonderful suffers from asthma. According to the guardian, appellant needs to separate herself from a lifestyle that mainly involves drinking alcohol with friends. Until she does that, Ormston believes, appellant won't be able to properly raise Joemiyde and Wonderful. Three witnesses testified on behalf of Ormston supporting her allegations that appellant continues to drink alcohol. Ormston recommended that the children stay in their current living arrangements in that it is the first time they have each been in a stable environment.

{¶ 12} Appellant took the stand and denied that she regularly goes to bars. She testified that she only goes to Alcoholics Anonymous meetings and to the store. She testified that she did not want Henrietta G. to get custody of Wonderful because she uses crack cocaine. She testified that she wants custody of her children because she loves them and they love her. She further testified that she has greatly benefited from the substance abuse counseling she has received and now feels that she is ready to care for her children. As for Lavelle, she testified that if she gets custody of her children he will no longer be welcome in her home.

{¶ 13} Rosie Manahan, a clinical therapist for Unison Behavioral Group, testified that appellant is one of her clients. She testified that appellant successfully completed an 18 week dual recovery program which included group and individual counseling. Manahan testified she still sees appellant every other week for monitoring. Manahan described appellant's progress as "good." Another clinical therapist for Unison, Karen Brank, testified that she counseled appellant for parenting and sobriety issues. She also conducted some therapy sessions at appellant's home with Joemiyde and Wonderful. Brank testified that appellant's interaction with her children was good and that her home was clean. Brank testified that in her professional opinion, appellant is capable of being a proper parent to her children.

{¶ 14} On December 8, 2003, the magistrate issued a decision finding that it was in the best interest of the children to award legal custody of Joemiyde to Reyaba L. and legal custody of Wonderful to William and Henrietta G. In the decision, the magistrate

noted that "all parties, including both fathers and GAL Ormston, are in favor of the children's respective caretakers receiving legal custody. The only person in opposition to the LCCS motion is [appellant]." The magistrate acknowledged that appellant had purportedly completed counseling, parenting classes, anger management and substance abuse treatment, however, she "* * * continues to engage in conduct which brings into question the success of the services in addressing her problems." Appellant filed timely objections to the magistrate's decision on December 19, 2003. The trial court adopted the magistrate's decision and on March 17, 2003, the court found appellant's objections not well-taken.[1] Appellant now appeals arguing that the magistrate's decision was against the manifest weight of the evidence.

{¶ 15} When evaluating whether a judgment is against the manifest weight of the evidence in a juvenile court, the standard of review is the same as that in the criminal context. In determining whether a criminal conviction is against the manifest weight of the evidence:

{¶ 16} '"[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [jury/trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new

[1]LCCS questions the timeliness of appellant's appeal with regard to Case No. 01092548. App.R. 4(B)(2) states that timely filed objections to a magistrate's decision tolls the time to file a notice of appeal. On March 17, 2003, the court issued an order ruling on appellant's objections as to both kids. Appellant properly filed her notice of appeal within thirty days of this order.

trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the [judgment].'" *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. "Every reasonable presumption must be made in favor of the judgment and the findings of facts [of the juvenile court]." *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. Moreover, "if the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the [juvenile] court's verdict and judgment." Id., citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶ 17} Pursuant to R.C. 2151.353(A)(3) a trial court, in its sound discretion, may award legal custody of a child who has been adjudicated neglected or dependent to a person other than the child's parents. *In re Coffey*, (Jan. 26, 1998), Madison App. No. CA97-05-021, unreported. Matters within the court's discretion will not be reversed absent an abuse of discretion. An abuse of discretion is more than just an error of law or of judgment; the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When making a legal custody decision pursuant to R.C. 2151.353, the "best interest of the child" standard is to be applied. *In re Pryor* (1993), 86 Ohio App.3d 327. Unlike legal custody cases brought pursuant to R.C. 2151.23(A)(2), the trial court is not required to make a finding of parental unsuitability. *In re T.W.*, 9TH Dist. No. 21594, 2003-Ohio-7185.

{¶ 18} Appellant contends that the magistrate's decision was against the manifest weight of the evidence given the fact that the record shows she completed her case plan and followed through with substance abuse treatment. The magistrate's decision does specifically recognize that appellant completed her case plan and followed through with the services LCCS provided for her. The magistrate, however, expresses doubt that appellant has received a long term benefit from completing her case plan and services. He bases his doubt on the testimony of witnesses who claimed to have seen appellant recently drinking at a party, at a wedding and at a bar. He cited the fact that appellant once tested positive for marijuana during the pendency of the case and the fact that she had threatened her caseworker. In sum, the magistrate did not find appellant's testimony to be credible.

{¶ 19} "The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record.

{¶ 20} "* * * In this regard, the reviewing court in such proceedings should be guided by the presumption that the trial court's findings were indeed correct." *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, citations omitted.

{¶ 21} Accordingly, we decline to substitute our judgment for that of the trial court. Finding no abuse of discretion, appellant's sole assignment of error is found not well-taken.

{¶ 22} On consideration whereof, the court finds that substantial justice has been done the party complaining, and the judgment of the Lucas County Common Pleas Court, Juvenile Division, is affirmed. Costs assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Melvin L. Resnick, J. _____
CONCUR.
JUDGE

Judge Melvin L. Resnick, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.