

[Cite as *In re A.M.*, 2010-Ohio-6142.]

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: A.M.

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 10 CA 16

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Juvenile Division, Case No. 08 NO
15

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 14, 2010

APPEARANCES:

For Appellee HCCS

For Appellant-Father

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Wise, J.

{¶1} Appellant-father Joshua Moore appeals the decision of the Holmes County Court of Common Pleas, Juvenile Division, granting permanent custody of his daughter, A.M., to Appellee Holmes County Department of Job and Family Services, Children Services Division (“HCCS”). The relevant facts leading to this appeal are as follows.

{¶2} A.M. was born to appellant and Dawn Shamp in November 2007.¹ Both mother and child tested positive for marijuana at the time of birth. HCCS initially became involved on a non-court basis; however, the agency was compelled to file an abuse/dependency complaint in the trial court on January 15, 2008. In addition to the concerns of illegal drug use by both parents, HCCS developed concerns of domestic violence in the parental relationship and additional alleged criminal activity.

{¶3} Appellant thereafter stipulated to the abuse and dependency allegations concerning A.M.

{¶4} On December 15, 2009, HCCS filed a motion for permanent custody. The matter proceeded to evidentiary hearings on March 5, 2010 and April 9, 2010. The trial court issued a judgment entry on July 2, 2010, granting permanent custody of A.M. to the agency.

{¶5} On July 30, 2010, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶6} “I. THE TRIAL COURT ERRED IN FINDING THAT AN AWARD OF PERMANENT CUSTODY TO THE HOLMES COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WAS IN THE CHILD A.M.’S BEST INTEREST.”

¹ Shamp has filed a separate appeal under case number 10-CA-15. An analysis of the permanent custody issues regarding her will be addressed in a companion opinion.

I.

{¶7} In his sole Assignment of Error, appellant contends the trial court erred in concluding that granting permanent custody of A.M. to the agency was in the child's best interest. We disagree.

{¶8} As an initial matter, we note appellant does not challenge the trial court's application of the "twelve of twenty-two" rule (see R.C. 2151.414(B)(1)(d)), based on A.M. being in agency temporary custody for the requisite number of months. Accordingly, we will directly proceed to an analysis of the best interest issue. See, e.g., *In re Walton/Fortson Children*, Stark App.No. 2007CA00200, 2007-Ohio-5819, ¶ 14; *In re T.S.*, Franklin App.Nos. 07AP-624, 07AP-625, 2007-Ohio-6645, ¶ 8-¶ 9.

{¶9} In determining the best interest of a child for purposes of a permanent custody disposition, the trial court is required to consider the factors contained in R.C. 2151.414(D). These factors are as follows:

{¶10} "(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster care givers and out-of-home providers, and any other person who may significantly affect the child;

{¶11} "(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;

{¶12} "(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 * * *;

{¶13} "(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;

{¶14} “(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.”

{¶15} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of 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* (Feb. 10, 1982), Stark App.No. CA-5758. 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 Construction* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. It is well-established that the trial court is in the best position to determine the credibility of witnesses. See, e.g., *In re Brown*, Summit App.No. 21004, 2002-Ohio-3405, ¶ 9, citing *State v. DeHass* (1967), 10 Ohio St .2d 230, 227 N.E.2d 212. Furthermore, “[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.” *In re Mauzy Children* (Nov. 13, 2000), Stark App.No. 2000CA00244, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316, 642 N.E.2d 424.

{¶16} The record in the case sub judice reveals that A.M. has two sisters, one of whom, age twelve, resides with Dawn Shamp's mother. Because A.M. was placed in temporary agency custody when she was just eight months old, she has had a minimal

relationship with her sisters, although she has had some supervised visitation with the twelve-year-old. On the other hand, according to the G.A.L. report of January 6, 2010, A.M. has been in the same foster family since the early stages of the case and appears to be “quite happy and doing well” in the foster home, where she has developed a “very strong” bond. The G.A.L. report recommended a grant of permanent custody to the agency. See R.C. 2151.414(D)(1) and (D)(2).

{¶17} Furthermore, evidence was adduced that appellant had at least twelve different residences between January 2008 and January 2010. During that same period, appellant held seven different jobs; by the time of the evidentiary hearing, neither side documented that appellant was currently employed. Appellant also failed several drug screens, was incarcerated four times, and engaged in three acts of domestic violence during the pendency of the case. See R.C. 2151.414(D)(4).

{¶18} Appellant nonetheless essentially argues that, particularly after August 2009, he has demonstrated a “dedicated effort to work on his case plan.” Appellant’s Brief at 13. He particularly maintains that he has been complying with counseling requirements and engaging in visitation with A.M., and that his current efforts will help ensure steady employment and permanent housing. However, upon review of the record and the findings of fact and conclusions of law therein, we find no basis to overturn the decision of the trier of fact, and we conclude the grant of permanent custody of A.M. was made in the consideration of the child’s best interests and did not constitute an error or an abuse of discretion.

{¶19} Appellant's sole Assignment of Error is therefore overruled.

{¶20} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Juvenile Division, Holmes County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JUDGES

JWW/d 1206

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: A.M. : JUDGMENT ENTRY
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: Case No. 10 CA 16

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, Holmes County, Ohio, is affirmed.

Costs assessed to appellant.

JUDGES