[Cite as *In re S.G.*, 2009-Ohio-4815.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN RE:	)	
	)	
S.G.,	)	
ALLEGED DEPENDENT CHILD.	)	
	)	CASE NO. 08-BE-42
	)	
	)	OPINION
	)	
	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas, Juvenile Division of Belmont County, Ohio Case No. 07JC412
JUDGMENT:	Affirmed
APPEARANCES: For Plaintiff-Appellee	Robert W. Quirk Assistant Prosecuting Attorney 147 West Main Street St. Clairsville, Ohio 43950
For Defendant-Appellant	Attorney Katherine E. Rudzik 26 Market Street, Suite 904 Youngstown, Ohio 44503

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 10, 2009

[Cite as *In re S.G.*, 2009-Ohio-4815.]
DONOFRIO, J.

{¶1} Appellant, Ronald Green, appeals from a Belmont County, Juvenile Division decision granting permanent custody of his son to appellee, the Belmont County Department of Job and Family Services.

{¶2} S.G. was born on January 31, 2007, to Pamela Summers and appellant. Summers and appellant are not married. Appellee became involved and implemented a safety plan for S.G. before he left the hospital due to Summers' mental health issues. The plan provided that S.G. not be left alone with Summers. However, approximately three weeks later, Summers left appellant and took S.G. with her. S.G. was then removed from his parents' custody and appellee was granted temporary custody. S.G. was placed in foster care with Russell and Bethany Larsen. Since then, he has been in the Larsens' care continuously.

{¶3} When S.G. was five months old, Bethany noticed that he was not meeting developmental milestones. She brought this to the attention of his pediatrician and was referred to Easter Seals for evaluation. S.G. was diagnosed as having "global" delays. Consequently, he requires speech, occupational, and physical therapies. He was also found to have a sensory processing disorder. This disorder requires that his caregiver administer certain therapies that have been deemed crucial to his development.

{¶4} On May 21, 2008, appellee filed a motion to terminate temporary custody and grant it permanent custody. At that time, S.G. was 16 months old. Appellee alleged that S.G. had been in its temporary custody for more than 12 of the preceding 22 months and alleged that he could not be placed with either parent within a reasonable amount of time. Appellee also filed an amended case plan with the court, which was signed by appellee and Summers.

{¶5} On October 22, 2008, Summers signed a permanent surrender of parental rights.

{¶6} The court held a two-day hearing on appellee's permanent custody hearing. Numerous witnesses presented testimony. The court found that S.G. had

been in an out-of-home placement for 12 of the last 22 months and that it was in his best interest that it grant permanent custody to appellee.

{¶7} Appellant filed a timely notice of appeal on December 10, 2008.

{¶8} Appellant raises three assignments of error. His first assignment of error states:

{¶9} "THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO BELMONT COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, CHILDREN'S PROTECTIVE SERVICES UNIT BECAUSE THEY FAILED TO DEVELOP AND IMPLEMENT A CASE PLAN REASONABLY CALCULATED TO ACHIEVE THE GOAL OF REUNIFICATION OF THE MINOR CHILD."

{¶10} Appellant makes no argument to support this assignment of error, other than to state that an agency must make a case plan in order to assist parents in improving their parenting skills and to have the children returned to their care.

{¶11} In this case, appellee filed at least two case plans for appellant to follow. Shannon Weekley, S.G.'s caseworker, testified as to the case plans and the assistance that appellee provided to appellant. She stated that because appellant is illiterate, the service workers involved in this case read appellant the case plans, case reviews, releases, and S.G.'s therapy instructions, even providing him with pictures when available. (Tr. 210). Weekley also stated that she switched appellant's visitation times with S.G. in order to accommodate appellant's request. (Tr. 213).

{¶12} Weekley then testified regarding the case plan goals that appellant met and the case plan goals he did not meet. She stated that he completed parenting classes, completed a psychological assessment, signed all necessary releases, and reported to a counselor, all in compliance with the case plan. (Tr. 217). Weekley then stated that appellant failed to consistently attend S.G.'s therapy sessions at Easter Seals, he cannot verbalize S.G.'s therapy techniques and why they are required, he does not always follow through with S.G.'s therapies, he has not defined age-appropriate roles for himself and S.G., and he does not have a contingency plan

in place for who would care for S.G. in his absence if S.G. lived with him, all in non-compliance with the case plan. (Tr. 218-20).

{¶13} Thus, appellant's contention that appellee failed to develop and implement a case plan is not supported by the record. Accordingly, appellant's first assignment of error is without merit.

{¶14} Appellant's second and third assignments of error are very similar. Therefore, we will address them together. They state:

{¶15} "THE TRIAL COURT'S DECISION TO TERMINATE THE APPELLANT'S PARENTAL RIGHTS AND GRANT PERMANENT CUSTODY TO THE DEPARTMENT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶16} "THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY FOR THE CHILDREN [sic.] BECAUSE IT WAS NOT IN THEIR [sic.] BEST INTEREST."

{¶17} Appellant argues that while the evidence demonstrated that S.G. is developmentally delayed and has special needs, no evidence demonstrated that appellant was unable or unwilling to meet S.G.'s needs. He acknowledges that Bethany has done a wonderful job as a foster mother to S.G. but contends that he could also do a wonderful job if given the chance. Appellant asserts that he has only been afforded limited visitation with S.G. He further contends that nothing negative was said about his visits with S.G. He asserts that the only times he missed his visits were when he had transportation issues. Appellant further states that any concern expressed that he did not apply S.G.'s therapy treatments properly could be alleviated if he had more time to practice in a comfortable setting, such as his home. Finally, appellant asserts that the trial court simply focused on his shortcomings and failed to protect his parental rights.

{¶18} A parent's right to raise his or her children is an essential and basic civil right. *In re Murray* (1990), 52 Ohio St.3d 155, 157, citing *Stanley v. Illinois* (1972), 405 U.S. 645, 651, 92 S.Ct. 1208. However, this right is not absolute. *In re Sims,* 7th

Dist. No. 02-JE-2, 2002-Ohio-3458, at ¶23. In order to protect a child's welfare, the state may terminate parents' rights as a last resort. Id.

{¶19} We review a trial court's decision terminating parental rights and responsibilities for an abuse of discretion. *Sims,* 7th Dist. No. 02-JE-2, at ¶36. Abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶20} The trial court may grant permanent custody of a child to the agency if the court determines by clear and convincing evidence that it is in the child's best interest to grant permanent custody to the agency and that the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(d). Clear and convincing evidence is evidence that produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368.

{¶21} In determining whether it is in the child's best interest to grant custody to the agency, the court shall consider:

{¶22} "(a) 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;

{¶23} "(b) The wishes of the child, * * * with due regard for the maturity of the child;

{¶24} "(c) 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, * * *;

{¶25} "(d) 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;

{¶26} "(e) Whether any of the factors in divisions (E)(7) to (11)[1] of this section apply in relation to the parents and child." R.C. 2151.414(D)(1).

{¶27} In its judgment entry, the court acknowledged S.G.'s developmental delays and noted that the evidence on this point was uncontroverted. It then discussed the testimony from S.G.'s therapists and noted that S.G. required weekly therapy sessions at Easter Seals and at-home therapy by his parent or guardian at least three times per day. The court took note of the testimony that appellant was inconsistent with his attendance at visitations and Easter Seals therapy sessions. The court noted appellant's testimony regarding his various health issues and transportation issues. It also discussed the testimony from the psychologist who examined appellant. The court noted the psychologist's testimony regarding appellant's I.Q., his conviction for gross sexual imposition, and her opinion that she had concerns about appellant parenting a special needs child and exercising poor judgment. The court then found that S.G. had been in an out-of-home placement for 12 of the last 22 months and that it was in his best interest that it grant permanent custody to appellee.

{¶28} The evidence supports the court's grant of permanent custody to appellee. Numerous witnesses testified at the hearing as follows.

{¶29} Dr. Judith Romano is S.G.'s pediatrician. She testified that S.G. has physical, mental, and speech delays, which are referred to as "global" delays. (Tr. 8).

---

[1] **{a}** None of the R.C. 2151.414(E)(7) to (11) apply here. They are:

{b} "(7) The parent has been convicted of or pleaded guilty to * * * [certain offenses involving the child, the child's siblings, or another child who lived in the parent's household at the time of the offense.]

{c} "(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, * * *.

{d} "(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

{e} "(10) The parent has abandoned the child.

{f} "(11) The parent has had parental rights involuntarily terminated * * * with respect to a sibling of the child."

Dr. Romano stated that because of S.G.'s special needs, a foster mother like Bethany is "priceless." (Tr. 13). Dr. Romano noted that Bethany was the one who first noticed S.G.'s delays and brought them to her attention. (Tr. 14). She stated that S.G. needs constant intervention from his primary caregiver in order to reach his full potential. (Tr. 13). She stated that S.G. has made improvement during the time he has been with Bethany. (Tr. 15). Dr. Romano testified that if S.G. does not consistently receive his physical, occupational, and speech therapies, he would regress and would not walk or talk. (Tr. 30).

{¶30} Dr. Romano testified that S.G. needs a legally secure placement and that the best legally secure placement is with appellee. (Tr. 16). She further opined that it would be in S.G.'s best interest to be placed with Bethany and Russell. (Tr. 16).

{¶31} Shaenan Miller is S.G.'s physical therapist at Easter Seals. She stated that S.G. continues to make progress, which is due to Bethany's work with him at home. (Tr. 37). Miller also stated that when she has seen appellant at the therapy sessions, S.G. has gone to him freely. (Tr. 47). She stated that appellant has attended 16 sessions out of approximately 30. (Tr. 55).

{¶32} Valerie Gardner is S.G.'s service coordinator at Help Me Grow. She stated that she visits Bethany's home twice a month. (Tr. 63). Gardner testified that S.G. recognizes Bethany as a mother and that his eyes light up when he sees Bethany and Russell. (Tr. 64). Gardner stated that the other children in Bethany's home provide a good environment for S.G. (Tr. 64-65). Gardner stated that Bethany has followed through with all recommendations made by Help Me Grow and Easter Seals and that Bethany is "very in tune" with S.G.'s needs. (Tr. 65). She testified that following through with his therapies is absolutely critical to S.G.'s continuing progress. (Tr. 66). Gardner opined that it is in S.G.'s best interest to have permanent custody granted to the agency. (Tr. 66).

{¶33} Ashley Taylor supervises appellant's visits with S.G. at the family visitation center. Taylor stated that she has seen appellant administer S.G.'s therapy

techniques learned from Easter Seals. (Tr. 85). She stated that she does not have to prompt appellant to do the therapies, which include brushing S.G.'s skin and using a vibrator around his mouth before meals. (Tr. 85). However, she also stated that appellant is not always consistent with completing the therapies and does not strictly follow the procedures. (Tr. 85). Taylor testified that appellant is very patient with S.G. (Tr. 89). But she stated that sometimes when S.G. is fussy or upset, appellant does not know what to do with him. (Tr. 90).

{¶34} Taylor stated that out of 60 scheduled visits with S.G., appellant has canceled 26 visits. (Tr. 88). Of the 26 canceled visits, 20 of them were due to lack of transportation. (Tr. 93). Taylor also stated that when Bethany comes to pick S.G. up from the visits, he is excited to see her and reaches for her. (Tr. 88-89).

{¶35} Lisa Stone is S.G.'s occupational therapist at Easter Seals. She stated that S.G. has a sensory defensiveness. (Tr. 109, 113). Stone stated that she observed appellant and S.G. on one occasion. (Tr. 119-20). She stated that she watched appellant perform a deep pressure protocol on S.G., which is part of S.G.'s therapy. (Tr. 120). It involves brushing S.G.'s arms, legs, hands, and back for a certain number of repetitions. Taylor stated that appellant performed part of the therapy, but did not complete it because S.G. ran away to play. (Tr. 120). She also stated that appellant did not perform it properly. (Tr. 121). She stated that she then instructed appellant how to properly perform the brushing therapy and appellant followed the directions. (Tr. 123). Taylor stated that she then instructed appellant how to perform S.G.'s joint compression therapy and he performed it correctly. (Tr. 124). She stated that appellant initially had trouble remembering what to do, but once she explained the techniques to him he was able to do them. (Tr. 134).

{¶36} Dr. Ellen Kitts is a pediatric physiatrist at Easter Seals who deals with developmentally delayed children. She evaluated S.G. She too concluded that S.G. has delays in all areas and requires occupational, physical, and speech therapies. (Tr. 147). She also stated that S.G. does not feel pain the way he is supposed to, which puts him at greater risk of injury. (Tr. 148). Some of the sensory therapies are

aimed at helping this, Dr. Kitts stated. (Tr. 149). She testified that S.G.'s therapies must be done specifically as instructed or they will not work. (Tr. 150). Dr. Kitts stated that S.G. needs a proactive guardian to pay attention to what is going on with him because he may not realize that he is injured. (Tr. 151).

{¶37} Aileen Mansuetto is the psychologist who evaluated appellant. She stated that appellant has an eighth-grade education, which he completed when he was 17 years old. (Tr. 161). Appellant has been receiving social security benefits since age five for heart difficulties and a seizure disorder. (Tr. 161). She stated that appellant is functionally illiterate. (Tr. 171). Appellant has prior criminal convictions for gross sexual imposition and purchasing alcohol for minors. (Tr. 162). Mansuetto gave appellant an IQ test, which revealed a provisional diagnosis of mild mental retardation. (Tr. 163). Mansuetto stated that her biggest concern with appellant parenting a child was the poor judgment he exhibited that resulted in his convictions for gross sexual imposition and purchasing alcohol for minors. (Tr. 165-66). She also opined that raising a special needs child would be especially difficult for appellant given his limited resources and capabilities. (Tr. 173).

{¶38} Bethany Larsen is S.G.'s foster mother. She relayed to the court S.G.'s daily routine, which consists of vibrator therapy around his mouth before every meal and snack to stimulate his facial muscles, brushing therapy and joint compressions every two hours from 9:00 a.m. until bedtime, and incorporating communication skill building into meal time and play time. (Tr. 180-83).

{¶39} Shannon Weekley is S.G.'s caseworker. In addition to her testimony regarding the case plans and appellant's completion and non-completion of the goals set out above, Weekley also testified to the following. She stated that S.G. has been in appellee's temporary custody for 21 of the last 22 months. (Tr. 207). Weekley stated that S.G. was originally removed from his mother's and appellant's care because they failed to comply with a safety plan that was in place for S.G. (Tr. 208).

{¶40} Weekley testified that appellant's attendance at visitations and Easter Seals appointments with S.G. has been inconsistent. (Tr. 210). She opined that

appellant cannot handle S.G.'s basic needs because she has observed that appellant has difficulty meeting his own basic needs. (Tr. 211).

{¶41} Weekley stated that S.G. is a part of the Larsen family as far as his interaction with the family members. (Tr. 216). She noted that he referred to Russell as "dad." (Tr. 217).

{¶42} Weekley expressed her belief that S.G. needs a legally secure, permanent placement. (Tr. 221). And she opined that this was not possible if S.G. was returned to appellant. (Tr. 221). She opined that it was in S.G.'s best interest if appellee was granted permanent custody. (Tr. 222).

{¶43} Darcy Springer is S.G.'s guardian ad litem. She testified that while appellant understands that S.G. has developmental delays, she does not believe that appellant has a complete understanding of S.G.'s disabilities. (Tr. 255). She also stated that transportation is a problem for appellant. (Tr. 256). Springer testified that appellant is a caring person at visitations and does the best that he can. (Tr. 257-58).

{¶44} Springer testified that she too believed that S.G. was in need of a legally secure, permanent placement. (Tr. 259-60). And she opined that it was in S.G.'s best interest that the court grant permanent custody to appellee. (Tr. 260). Springer testified that placement with appellant would not be proper. (Tr. 260). For support, she stated that appellant did not completely understand S.G.'s needs, appellant did not have his transportation issues worked out so that he could get S.G. back and forth to his appointments, and she felt that appellant was lacking in judgment. (Tr. 260).

{¶45} Carol Baker is appellant's half-sister. She testified that she contacted Weekley and asked that S.G. be placed with her. (Tr. 284). Baker admitted, however, that she has not seen S.G. since shortly after his birth. (Tr. 288).

{¶46} Appellant was the last to testify. He stated the following. He receives social security benefits because of his illiteracy, seizure trouble, and heart problems. (Tr. 297-98). Specifically, he has grand mal seizures when he becomes stressed.

(Tr. 298, 304). He is on anti-seizure medication and high blood pressure medication. (Tr. 298). Appellant is unemployed. (Tr. 299). Appellant has three adult children. (Tr. 299). One of these children was raised by his sister. (Tr. 299-300).

{¶47} Appellant stated that he understands S.G.'s needs. (Tr. 300). He testified that Stone and Easter Seals both showed him a different way to perform S.G.'s therapies. (Tr. 306). He stated that he knows the proper way to perform each of the therapies. (Tr. 306-309).

{¶48} Appellant testified that he relies on family members for transportation and that when they are working it is difficult for him to get to visitations and Easter Seals appointments. (Tr. 302). He does not have a driver's license or a vehicle. (Tr. 326). Appellant stated that he missed some visits due to health issues. Appellant stated that he was in the hospital four or five times due to the flu, heart trouble, and a bad seizure. (Tr. 304). Appellant stated that when he has a seizure it can last two to three days and he must be hospitalized. (Tr. 304-305). He told the court that if he had a seizure while S.G. was in his care, his plan was to get to the phone and call a family member for help. (Tr. 336). Appellant testified that if a health or transportation issue came up, he would rely on his sister to care for S.G. (Tr. 312). Appellant admitted that even though he does not have a driver's license, he was arrested for driving under the influence and pleaded guilty during the pendency of this matter. (Tr. 326-27). He also admitted that he was not supposed to be drinking with his heart and seizure problems. (Tr. 327).

{¶49} First, it is apparent that appellee met the requirement that S.G. has been in its care for at least 12 of the last 22 months. Weekley testified that S.G. has been in appellee's temporary custody for the past 21 months. Thus, if clear and convincing evidence demonstrated that it was in S.G.'s best interest for the court to grant custody to appellee, then we must uphold the trial court's determination. The evidence was clear and convincing on this point.

{¶50} Each witness who was asked the question, including S.G.'s pediatrician, his caseworker, and his guardian ad litem, opined that S.G. needed a

legally secure placement and that it was in S.G.'s best interest that the court grant permanent custody to appellee.

{¶51} As to the first best interest factor, everyone who testified about S.G.'s relationship with Bethany and Russell had only positive things to say. For instance, Weekley stated that S.G. called Russell "dad" and Dr. Romano stated that a foster mother like Bethany was "priceless" to S.G. As to S.G.'s relationship with appellant, most testimony was also positive. For instance, Springer stated that appellant is caring and Miller stated that S.G. goes to appellant freely. As to the second factor, S.G.'s wishes were not expressed, presumably due to his young age. As to the third factor, S.G. has been in appellee's temporary custody for all but the first six weeks of his life. He has been in the Larsens' care the entire time and seems to be a part of their family. And as to the fourth factor, all witnesses who testified on the subject opined that S.G. needs a legally secure permanent placement. The witnesses also all agreed that type of placement could not be achieved without a grant of permanent custody to the agency.

{¶52} Thus, of three best interest factors that apply in this case, two weigh heavily in favor of granting custody to appellee and the other weighs slightly in favor of granting custody to appellee. No factors weigh against granting custody to the agency.

{¶53} In addition to these factors two other main issues play a large role in S.G.'s best interest.

{¶54} The first issue is S.G.'s need for numerous, structured therapies. The therapists and Dr. Romano all opined that Bethany's work with S.G. has played a huge role in his progress. They also all agree that it is critical that S.G.'s therapies continue and that they are performed exactly as instructed so that he may reach his potential. It was brought out that appellant needed some instruction in the proper way to perform S.G.'s therapies and that he was not always consistent in performing them. Appellant's lack of structure and imprecise performance of S.G.'s therapies would likely cause S.G. to not reach his full potential. It was also brought out that

appellant does not appreciate the severity of S.G.'s disabilities. This too could hinder S.G.'s progress if he was in appellant's care because appellant might not give S.G.'s therapy sessions and appointments the priority that they require.

{¶55} The second issue concerns appellant's poor judgment, health issues, and lack of transportation.

{¶56} Appellant has been convicted of gross sexual imposition and purchasing alcohol for minors. He also pleaded guilty to driving under the influence, which occurred during the pendency of this matter. These offenses all indicate that appellant has very poor judgment. And the fact that appellant was driving under the influence during the pendency of this case indicates that he did not appreciate the seriousness of the proceedings.

{¶57} Additionally, appellant stated that when he suffers a seizure it can last up to three days and he must be hospitalized. And while he stated that he could rely on Baker to care for S.G. during such a time, Baker has not even seen S.G. since he was first born. Furthermore, if appellant had a seizure or a heart attack while he was home alone with S.G., he stated that his plan was to call a family member for help. This would likely be difficult if not impossible for appellant if he was in the midst of a major health crisis.

{¶58} And appellant has no driver's license or vehicle. The reason he gave for most of the visits and Easter Seals appointments that he missed was that he did not have a ride. Given that he could not find a ride to attend S.G.'s weekly therapy sessions and visits, it is likely that appellant would have difficulty ensuring that S.G. made it to his weekly therapy sessions, which the therapists all opined were critical to his progress. Furthermore, because appellant's only opportunities to visit with his son were at his weekly visits and therapy sessions, it would seem that he should have made a more concerted effort to take full advantage of these occasions despite his lack of a driver's license and vehicle.

{¶59} Based on the foregoing, the trial court did not abuse its discretion in granting S.G.'s permanent custody to appellee. Accordingly, appellant's second and third assignments of error are without merit.

{¶60} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.