

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: : JUDGES:
: Hon. W. Scott Gwin, P.J.
JASON ALLEN TATE : Hon. Sheila G. Farmer, J.
: Hon. John F. Boggins, J.
JEREMIAH MICHAEL TATE :
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Case No. CT2004-0030
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OPINION

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Juvenile Division, Case Nos. 20330083 &
20330084

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 29, 2004

APPEARANCES:

For Appellant

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For Appellee

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Farmer, J.

{¶1} On August 11, 2003, appellee, the Muskingum County Department of Job and Family Services, filed a complaint for temporary custody of Jason Allen Tate and Jeremiah Michael Tate, both born August 9, 2003, alleging the children to be dependent/neglected. Mother of the child is Janie Conoway; father is appellant, Jason Tate. By judgment entry filed October 16, 2003, the trial court found the children to be dependent, and granted temporary custody of the children to appellee.

{¶2} On March 16, 2004, appellee filed a motion for permanent custody. A hearing was held on May 5, 2004. By judgment entry filed May 13, 2004, the trial court granted permanent custody of the children to appellee.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT ERRED BY ADMITTING HEARSAY EVIDENCE OF APPELLANT'S INCARCERATION AND FINDING THAT THE APPELLANT JASON TATE WOULD BE UNAVAILABLE TO CARE FOR HIS CHILDREN FOR AT LEAST 18 MONTHS DUE TO HIS SERVING A PRISON SENTENCE."

I

{¶5} Appellant claims the trial court erred in finding he was incarcerated and would remain incarcerated for eighteen months from the filing of the permanent custody motion. We disagree.

{¶6} 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* (February 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.

{¶7} R.C. 2151.414(E) sets out the factors relevant to determining permanent custody. Said section states in pertinent part as follows:

{¶8} "(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶9} "(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

{¶10} "(16) Any other factor the court considers relevant."

{¶11} Appellant argues appellee failed to prove by clear and convincing evidence that he would not be released within eighteen months from the filing of the

permanent custody motion. Specifically, appellant argues such testimony from a caseworker, Jennifer Hess, constituted hearsay as it was based on an Ohio Offender website which did not meet "the standards of the public records exception." Appellant's Brief at 4.

{¶12} The permanent custody motion was filed on March 16, 2004, and the hearing was held on May 5, 2004. Appellee was required to prove that appellant would still be incarcerated on September 16, 2005.

{¶13} The guardian ad litem report filed on May 7, 2004 states appellant's release date from prison to be April 26, 2007:

{¶14} "Mr. Tate has been incarcerated since the birth of the children. He has expressed interest in the children in the form of letters to the case worker, stating that he would like a relationship with the children when he is released from prison. Mr. Tate has not provided the case worker with a release date. The guardian ad litem reviewed the Court Entry in which Mr. Tate was sentenced. (A certified copy is attached hereto.) Mr. Tate pled guilty to Possession of Drugs (Crack Cocaine), a felony of the first degree. The Court determined that the charge was subject to a mandatory sentence. Accordingly Mr. Tate was sentenced to a mandatory sentence of four years on July 28, 2003 with a credit of 93 days for time served prior to that date. Therefore, the apparent release date is around April 26, 2007. Mr. Tate apparently has had other felony convictions for drug related offenses in 1999, 2000 and 2001. Mr. Tate has not provided any financial support for the children."

{¶15} This report includes a certified copy of appellant's September 8, 2003 conviction and sentence which states appellant's four year prison sentence is

mandatory. We find the guardian ad litem report to be sufficient to establish that appellant will still be incarcerated on September 16, 2005.¹

{¶16} Appellant did not object to the Ohio Offender website testimony (Exhibit 1), and did not object to its admission into evidence. T. at 21-22, 30. Defense counsel objected to the inference that appellant would still be incarcerated at the close of the eighteen months statutory time frame. T. at 30.

{¶17} Despite the inference of Exhibit 1, we find the guardian ad litem report filed as part of the record establishes the mandatory sentence under Ohio's truth-in-sentencing law. See, R.C. Chapter 2929.

{¶18} Upon review, we find the trial court's decision was not against the manifest weight of the evidence, and sufficient evidence was submitted to support the decision.

{¶19} The sole assignment of error is denied.

¹The report was filed prior to the trial court granting permanent custody of the children to appellee.

{¶20} The judgment of the Court of Common Pleas of Muskingum County, Ohio
is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Boggins, J. concur.

JUDGES

SGF/db 1025

[Cite as *In re Tate*, 2004-Ohio-7316.]

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

IN RE:

JASON ALLEN TATE

JEREMIAH MICHAEL TATE

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JUDGMENT ENTRY

CASE NO. CT2004-0030

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Muskingum County, Ohio is affirmed.

JUDGES