[Cite as *In re Minton*, 2008-Ohio-2869.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

SHELBY MINTON
MARIAH MINTON

JUDGES:
Hon. Sheila G. Farmer, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. CT2007-0049

O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Juvenile Division, Case Nos. 38791 & 20530038

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 6, 2008

APPEARANCES:

For Appellant

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For Appellee

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For Children

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Farmer, P.J.

{¶1} On June 9, 1998, the Muskingum County Children's Services, filed a complaint, alleging Shelby Minton, born April 26, 1998, to be a dependent child. Mother of the child is Jackie Himes; father is appellant, Brian Minton. On July 22, 1998, Shelby was adjudicated a dependent child, and was to remain in the legal custody of her parents.

{¶2} On November 12, 2004, appellee filed a complaint against the same parents, alleging Madison Minton, born September 4, 2004, to be a dependent child.

{¶3} On March 21, 2005, appellee filed a complaint against the same parents, alleging Mariah Minton, born March 12, 2001, to be a dependent child. Appellee also filed a motion to modify the disposition of Shelby, from legal custody to the parents to temporary custody to appellee.

{¶4} On April 4, 2005, Madison and Mariah were adjudicated dependent children, and were placed in appellee's temporary custody. Shelby's prior disposition was modified and she too was placed in appellee's temporary custody.

{¶5} On February 23, 2006, appellee filed a motion to modify the prior dispositions of all three children, to one of permanent custody.

{¶6} On May 25, 2006, the parents moved to remove the guardian ad litem and appoint a new guardian. The trial court denied this motion.

{¶7} On August 24, 2006, the parents voluntarily consented to the permanent custody of Madison to appellee. Temporary custody for Shelby and Mariah was extended to allow the parents more time to complete the case plan.

{¶8} On December 21, 2006, appellee once again filed a motion to modify the prior dispositions of Shelby and Mariah to one of permanent custody.

{¶9} A hearing commenced on June 4, 2007. By judgment entry filed July 18, 2007, the trial court terminated the parents' parental rights, and granted permanent custody of Shelby and Mariah to appellee.

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

I

{¶11} "IT WAS PREJUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE FOR THE TRIAL COURT TO TERMINATE THE PARENTAL RIGHTS OF APPELLANT BRIAN MINTON."

II

{¶12} "IT WAS PREJUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE TO GRANT PERMANENT CUSTODY OF THE MINOR CHILDREN TO MUSKINGUM COUNTY CHILDREN SERVICES."

III

{¶13} "IT WAS PREJUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE TO FIND THAT THE CONTINUATION OF THE CHILDREN'S PRESENCE IN APPELLANT BRIAN MINTON'S HOME WOULD BE CONTRARY TO THE BEST INTEREST AND WELFARE OF THE MINOR CHILDREN."

IV

{¶14} "IT WAS PREJUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE TO FIND THAT APPELLEE, MUSKINGUM COUNTY

CHILDREN SERVICES, MADE REASONABLE EFFORTS TO PREVENT PLACEMENT OUTSIDE THE HOME."

V

{¶15} "IT WAS PREJUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE TO FIND THAT TEMPORARY PLACEMENT OF THE MINOR CHILDREN WITH THE FOSTER FAMILY WAS IN THE BEST INTEREST OF THE MINOR CHILDREN."

VI

{¶16} "MUSKINGUM COUNTY CHILDREN SERVICES FAILED TO PRODUCE A DEGREE OF PROOF BY THE BURDEN OF CLEAR AND CONVINCING EVIDENCE THAT THE MINOR CHILDREN COULD NOT BE PLACED WITH APPELLANT, BRIAN MINTON WITHIN A REASONABLE TIME."

VII

{¶17} "IT WAS PREJUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE TO FIND A CAUSAL LINK BETWEEN THE BEHAVIORS EXHIBITED BY THE MINOR CHILDREN AND THE PARENTING PROVIDED BY APPELLANT, BRIAN MINTON AS THE MINOR CHILDREN DISPLAYED INAPPROPRIATE BEHAVIORS MONTHS AFTER VISITATION OF THE BIOLOGICAL PARENTS WAS SUSPENDED."

VIII

{¶18} "THE G.A.L. REPORT AND RECOMMENDATIONS LACK OBJECTIVITY AS THE G.A.L. FAILED TO MEET WITH ALL PARTIES CONCERNED AND FAILED TO VISIT APPELLANT, BRIAN MINTON'S HOME AS THE G.A.L. WAS 'FEARFUL OF

GOING TO HIS HOUSE AND HAS NOT VISITED HIS HOUSE.' CASE WORKER, CATHY LOUCKS, THE FAMILY STABILITY CASE WORKER AND OTHERS DID NOT SHARE THE G.A.L.'S FEAR OF APPELLANT, BRIAN MINTON."

IX

{¶19} "THE G.A.L. REPORTS AND RECOMMENDATIONS AND G.A.L. EX-PARTE MOTIONS BEGINNING APRIL 7, 2005 THROUGH JUNE 4, 2007 LACK OBJECTIVITY AND FACTUAL BASIS INDICATING A HOSTILE ENVIRONMENT BETWEEN THE G.A.L. AND APPELLANT, BRIAN MINTON."

I, II, III, IV, V, VI, VII

{¶20} In these assignments of error, appellant challenges the trial court's decision to grant permanent custody of the children to appellee as being against the manifest weight of the evidence. As these assignments of error address the specific facts and testimony of the witnesses, we will address them collectively.

{¶21} 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.

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

{¶23} "(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:

{¶24} "(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

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

{¶26} R.C. 2151.414(B)(1) specifically states permanent custody may be granted if the trial court determines, by clear and convincing evidence, that is in the best interest of the child, as long as any of the following applies:

{¶27} "(a) The child is not abandoned or orphaned or has not 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, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶28} "(b) The child is abandoned.

{¶29} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶30} "(d) 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."

{¶31} The trial court specifically found the children had been in appellee's custody for twelve or more months of a consecutive twenty-two month period, and proceeded to the best interest test. Appellant argues because the children were not abandoned or orphaned, the focus should turn "to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents." Appellant's Brief at 29. We disagree with this interpretation of the statute.

{¶32} A clear interpretation of the statute sets forth that once the "magic" time limits of subsection (B)(1)(d) have passed, a trial court may move to a best interest test. Under subsection (B)(1)(a), the child must *not* have 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. In the case sub judice, the trial court specifically found the children

had been in appellee's temporary custody for twelve or more months of a consecutive twenty-two month period, therefore R.C. 2151.414(B)(1)(d) is applicable to the facts of this case, and appellant did not challenge the trial court's finding under said subsection. See, *In re Canterucci Children,* Stark App. No. 2006CA00144, 2006-Ohio-4969.

{¶33} A review of the evidence presented in this case clearly points out why the legislature set forth the automatic provisions of R.C. 2151.414(B)(1)(d). The parents' case plan had been completed. They both took the required parenting classes (1-2-3 Magic) two times, and twice failed the tests for successful completion despite attempts to facilitate their special needs. T. at B-15-17, B-58-61. A third session was approved, but the parents did not pursue it. T. at B-17-19. During visitations, there was very little evidence of any follow-through from the classes, and the visits were chaotic. T. at B-19-20, B-75. The parents exhibited very little control over the children. T. at B-24-25. A stable job, a home, and budgeting skills were also required in the case plan. Appellant had a new job, mother did not. T. at B-6-7. They appeared not to understand budgeting, and lost one home because they did not prioritize and pay their mortgage. T. at B-8-11. Also, their utilities were shut off because of budgeting issues. T. at B-10.

{¶34} It was the opinion of two medical professionals, psychologist David Tennenbaum and clinical counselor Gail Campbell, Ph.D., that the parents were not able to resume parenting at the time of the hearing, and it was doubtful if they ever could, even with more time to complete the case plan. T. at A-11-13, A-19-20, A-21-22, A-67-68, A-75. "In light of this family's pattern, it appear the children will not benefit but are more likely to decompensate if visitation were to increase." T. at A-67-68; see also, T. at A-243.

{¶35} Given this evidence, not only does subsection (B)(1)(d) apply, but it was also established that reasonable efforts and time have been expended on the case plan to fulfill the requirements of subsection (B)(1)(a).

{¶36} As for best interests, R.C. 2151.414(D) sets out the factors relevant to determining the best interests of the child. Said section states relevant factors include, but are not limited to, the following:

{¶37} "(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;

{¶38} "(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;

{¶39} "(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;

{¶40} "(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;

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

{¶42} It was the general opinion of the experts and social workers that the children were in need of stability and consistency which the parents are unable to provide. T. at A-216. The children would decompensate with increased contact with

the parents. T. at A-91. The children's difficult emotional issues would increase with each parental visit. T. at A-65-66. It was opined that neither parent was likely to significantly change. T. at A-19-20, A-39.

{¶43} Although the children have emotional problems, the genesis of these problems began in the home. T. at A-128-129, A-159-160. The children have bonded with their foster parents, and want to live with them. T. at A-161, A-164. Elizabeth Coughenour, the children's licensed independent social worker, testified to the following:

{¶44} "Although Brian and Jackie are, love their children and they are making every attempt to put themselves in a position where they can be stable and raise their children, these children don't have that time. They've got pretty sever psychotherapy needs. And the time restraints of their becoming stable in an environment and the time restraints of these children have to get treatment. Without all of the crisis going on. Its imperative and bottom line is I don't work for you, Children Services. You know, I'm getting a report together for the Judge. But the bottom line is these children are our clients and we as therapist in an agency have to do what we feel is best for them at the time. Brian and Jackie were appropriate with the children. The children's behavior exasperated and became worse. It had nothing to do with Mariah and Jackie and their observation at the time. The children's behavior deteriorates over a period of time when they are with their biological parents. This is a deterioration that the children can't afford at this time because intervention with these kids, we are seeing some progression with these children that I've not seen a couple years. And I hate to see that go away." T. at A-243.

{¶45} Upon review, we find the trial court did not err in granting permanent custody of the children to appellee.

{¶46} Assignments of Error I, II, III, IV, V, VI, VII are denied.

VIII, IX

{¶47} Appellant claims the guardian ad litem's report lacked objectivity and factual basis. We disagree.

{¶48} Appellant argues the guardian ad litem was biased against him because she was fearful of going to his home, and failed to conduct an independent investigation. An examination of the transcript reveals the guardian ad litem was thoroughly cross-examined on these issues. The trial court was free to accept or reject the guardian ad litem's analysis and any perceived prejudice toward the parents.

{¶49} Further, we find the guardian ad litem's report and testimony merely reflected the observations of the independent social workers. Any error or prejudice was outweighed by the substantiating evidence.

{¶50} Assignments of Error VIII and IX are denied.

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

By Farmer, P.J.

Wise, J. and

Delaney, J. concur.

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JUDGES

SGF/sg 0421

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	
	:	
SHELBY MINTON	:	
MARIAH MINTON	:	JUDGMENT ENTRY
	:	
	:	
	:	CASE NO. CT2007-0049

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

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JUDGES