

[Cite as *In re L.C.*, 2010-Ohio-778.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93657

**IN RE: L.C.
A Minor Child**

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD07900039

BEFORE: Jones, J., Kilbane, P.J., and Sweeney, J.

RELEASED: March 4, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, M.G. (“mother”), appeals the decision of the Cuyahoga County Juvenile Court finding that her son L.C. was a dependent child and its subsequent disposition granting Cuyahoga County Department of Children and Family Services (“CCDCFS”) permanent custody of him.¹ The mother contends the court’s adjudication of her son as dependent and granting of permanent custody to CCDCFS was against the manifest weight of the evidence.

For the reasons that follow, we disagree and affirm the judgment of the trial court.

{¶ 2} L.C. was born in 2006 with special needs. At birth, CCDCFS placed him in a foster home. Shortly thereafter, the agency was able to place L.C. back with his mother because they were going to live with the mother’s sister, who was to help the mother care for L.C. After a few months, the sister contacted CCDCFS saying that she could no longer care for L.C. because the mother would not learn how to provide for L.C.’s basic needs and would often leave the house and disappear without telling anyone.

{¶ 3} In January 2007, CCDCFS placed L.C. in a specialized foster home. CCDCFS filed a complaint in the juvenile court with a prayer for permanent custody, alleging that L.C. was a dependent child because of the mother’s

¹ The parties are referred to herein by their initials or title in accordance with this Court’s established policy regarding non-disclosure of identities in juvenile cases.

inability to provide care for the child due to the mother's mental retardation and because no relatives were available to assist her in caring for the child. The mother was examined by the court psychologist who opined that the mother was mildly mentally retarded with an IQ of 57 and could not parent independently.

{¶ 4} A trial was held on the prayer for permanent custody and the court granted CCDCFS permanent custody of L.C. finding that “[t]he chronic mental issues of the mother are so severe that it makes the mother unable to provide an adequate permanent home for the child at this time and, as anticipated, within one year.”

{¶ 5} The mother appealed to this court, arguing that the trial court violated Juv.R. 29 by accepting the mother's admissions and adjudicating the child dependent. We agreed and held that the trial court failed to determine whether the mother truly understood the allegations against her and did not adequately inform her of the consequences of her admission, as Juv.R. 29(D)(1) requires. *In re L.C.*, Cuyahoga App. No. 90390, 2008-Ohio-917. We reversed the trial court's finding that L.C. was dependent and its grant of permanent custody to CCDCFS and remanded the case.

{¶ 6} On remand, the trial court recused itself, and the case was assigned to a new judge. The newly assigned judge held numerous lengthy pre-trials at which the court participated, reestablished a visitation schedule, and finally held an adjudicatory hearing. At the hearing, the trial court found by clear and convincing evidence that L.C. was a dependent child.

{¶ 7} In June 2009, a trial was held on the prayer for permanent custody. At the trial, CCDCFS social worker Sarah Narine (“Narine”) testified that L.C. had been in foster care since he was four months old and that CCDCFS had permanent custody of the mother’s other three children. Narine explained how the agency established a safety plan by which the mother could regain custody of L.C., but that safety plan fell through when the mother’s sister decided she could no longer help care for the child because the mother refused to learn how to provide for the basic care of L.C.

{¶ 8} As to the mother’s case plan, Narine testified that mother did not follow through with a referral to the court psychologist for another evaluation, even after the social worker tried several times to get the mother to the appointment. Narine testified that she tried to give the mother bus passes, wrote out a calendar for her, and even offered to give the mother a ride, even though that was against agency policy. Narine stated that she had visited the mother’s house and the mother did not have any beds in the house, only a broken couch, did not have any food in the refrigerator, and did not have anything for the child in the house. A week prior to trial, Narine found out that the mother had moved in with a friend and tried to visit that apartment, but the mother refused to give Narine her new address. The social worker further testified that mother missed over half of her scheduled weekly visits with L.C. and did not have a working telephone.

{¶ 9} Narine explained that during the mother's supervised visits with her son, the mother rarely engaged L.C. and often did other things, like paperwork or napping, during her weekly visits. When staff tried to engage the mother, she became defensive. Narine did concede that some visits went well but it did not appear as though the child had a bond with his mother.

{¶ 10} L.C.'s guardian ad litem testified that the child continues to have special needs and developmental delays and, in her opinion, the mother cannot provide for the child due to her limited mental capabilities, difficulty in keeping a schedule, and the fact she is not earning a living.

{¶ 11} The trial court issued a journal entry granting permanent custody of L.C. to CCDSCFS.

Standard of Review

{¶ 12} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children. *In re Murray* (1990), 52 Ohio St.3d 155, 156, 556 N.E.2d 1169. However, a parent's right is not absolute. "The natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed." *In re Cunningham* (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034. Consequently, the state may terminate parental rights when the child's best interest demands it.

{¶ 13} "If the record shows some competent, credible evidence supporting the trial court's grant of permanent custody to the county, we must affirm that

court's decision, regardless of the weight we might have chosen to put on the evidence.” *In re P.R.*, Cuyahoga App. No. 79609, 2002-Ohio-2029, at ¶15.

{¶ 14} The standard of proof to be used by the trial court when conducting permanent custody proceedings is clear and convincing evidence. R.C. 2151.414(B)(1). “Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.” *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118.

{¶ 15} It is well established that when some competent, credible evidence exists to support the judgment rendered by the trial court, an appellate court may not overturn that decision unless it is against the manifest weight of the evidence. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶ 16} The discretion that a trial court enjoys in custody matters 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 Satterwhite*, Cuyahoga App. No. 77071, 2001-Ohio-4137. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding (i.e., observing their demeanor, gestures, and voice inflections, and using these observations in weighing the credibility of the proffered testimony) cannot be conveyed to a reviewing court by a printed record. *Id.*, citing *Trickey*

v. Trickey (1952), 158 Ohio St. 9, 13, 106 N.E.2d 772. As the Ohio Supreme Court has stated, “it is for the trial court to resolve disputes of fact and weigh the testimony and credibility of the witnesses.” *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 23, 550 N.E.2d 178.

{¶ 17} The standard of review in permanent custody cases is to determine whether the trial court abused its discretion in reaching its judgment. To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

Adjudication

{¶ 18} In the first assignment of error, the mother argues that there was insufficient evidence to find that L.C. was dependant and the adjudication of dependent was against the manifest weight of the evidence.

{¶ 19} As is pertinent to this case, R.C. 2151.04 defines a “dependent child” as a child:

“(A) Who is homeless or destitute or without adequate parental care, through no fault of the child’s parents, guardian, or custodian;

“(B) Who lacks adequate parental care by reason of the mental or physical condition of the child’s parents, guardian, or custodian;

“(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship;

“(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

“(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

“(D) To whom both of the following apply:

“(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

“(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.”

{¶ 20} It is the state that must prove by clear and convincing evidence that a child is dependent. See Juv.R. 29(E)(4); R.C. 2151.35(A). Clear and convincing evidence is that which “produce[s] in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *In re Pieper Children* (1993), 85 Ohio App.3d 318, 326, 619 N.E.2d 1059, quoting *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368.

{¶ 21} The mother argues that CCDCFS failed to present evidence establishing that L.C. was a dependent child. She argues that the evidence

presented at the adjudicatory hearing shows she has stable housing, does not have a drug or alcohol problem, and can live independently. She further argues that L.C. cannot be found dependent because there was no evidence presented to show dependency under R.C. 2151.04(A) and (C).

{¶ 22} The social worker testified that the mother continuously refused to take an active role in caring for L.C., had serious cognitive delays, lacked insight into her mental condition, was unwilling to participate in services as outlined in the case plan, and had three other children that had already been adjudicated dependent and/or neglected and placed in the permanent custody of CCDCFS.

{¶ 23} We find that the state provided clear and convincing evidence pursuant to R.C. 2151.04 to show L.C. was a dependent child.

{¶ 24} Therefore, the first assignment of error is overruled.

Disposition

{¶ 25} In the second assignment of error, the mother argues that the trial court erred in granting permanent custody of L.C. to CCDCFS.

{¶ 26} R.C. 2151.353(A)(4) provides that if a child is adjudicated abused, neglected, or dependent, the court may commit the child to the permanent custody of a children services agency if the court determines, in accordance with R.C. 2151.414(E): (1) that the child cannot be placed with one of the child's parents within a reasonable time, or should not be placed with either parent; and (2) determines in accordance with R.C. 2151.414(D) that the permanent commitment is in the best interest of the child.

{¶ 27} In this case, the trial court found pursuant to R.C. 2151.414(E)(1), (2), (11), and (15), that the mother had failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home, that the mother's mental illness made her unable to provide an adequate permanent home for the child, the mother had parental rights involuntarily terminated with respect to a sibling of the child and has failed to provide clear and convincing evidence to prove that she can provide a legally secure permanent placement and adequate care for the child, and that the likelihood of abuse or neglect makes the child's placement with the mother a threat to the child's safety.

{¶ 28} R.C. 2151.414(D)(1) through (5) sets forth the relevant factors that a court must consider in determining the best interest of the child. These factors include, but are not limited to, the following:

“(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;

“(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;

“(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;

“(4) The child's need for a legally secure permanent placement and whether

* * [it] can be achieved without a grant of permanent custody to the agency;

“(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. R.C. 2151.414(D).”

{¶ 29} This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re Moore* (Aug. 31, 2000), Cuyahoga App. No. 76942, citing, *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 621 N.E.2d 426; *In re C.H.*, Cuyahoga App. Nos. 82258 and 82852, 2003-Ohio-6854.

{¶ 30} The mother argues that permanent custody should not have been granted because she substantially complied with the case plan, had housing, and attended visits with the child. The record, however, belies that argument.

{¶ 31} The trial court found that although the mother initially demonstrated an ability to care for L.C. at birth and during his infancy, observations by the caseworker and visitation supervisors showed that the mother failed to engage or provide appropriate supervision for the child as he developed into a toddler. The court stated that “[t]he significance of bond between the child and mother is questionable, and without behaviors supporting a bond between mother and child, the relationship appears to be based on scheduled visitation, routine, and care taking.” The court also noted that the mother missed scheduled visitation appointments, was unable to adequately supervise or engage the child, and had failed to engage a family member or community based support system to help her care for the child.

{¶ 32} The trial court further noted that the mother was minimally self-sufficient and did not live independently, but had to rely on a friend for a place to live.

{¶ 33} We find that the evidence presented at the adjudicatory and dispositional hearings show that a grant of permanent custody to CCDCFS was in the best interest of the child.

{¶ 34} Therefore, we find that there was sufficient evidence to support the trial court's decision to grant permanent custody to CCDCFS. We likewise find that the granting of permanent custody was not against the manifest weight of the evidence. The second assignment of error is overruled.

{¶ 35} Accordingly, judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

**MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR**

