

[Cite as *In re H.S.*, 2009-Ohio-4054.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

H.S.

DEPENDENT CHILD

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Patricia A. Delaney, J.

Case No. 2009AP040016

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Juvenile Court, Case No. 07JN00662

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 12, 2009

APPEARANCES:

For Appellant

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For Debra Smith

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For Appellee

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For Child

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Guardian ad Litem

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Farmer, P.J.

{¶1} On November 13, 2007, appellee, the Tuscarawas County Job & Family Services, filed a complaint for the temporary custody of H.S. born February 19, 1999, alleging the child to be neglected and dependent. Mother of the child is Debra Smith; father is appellant, William Smith. On December 11, 2007, appellant admitted to a dependency finding, and the child was placed in appellee's temporary custody.

{¶2} On October 14, 2008, appellee filed a motion to modify prior disposition to one of permanent custody based upon appellant's failure to comply with the case plan and Ms. Smith's abandonment. A hearing was held on March 26, 2009. By judgment entry filed March 27, 2009, the trial court granted permanent custody of the child 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} "THERE WAS NOT CLEAR AND CONVINCING EVIDENCE FOR THE TRIAL COURT TO FIND THAT THE MINOR CHILD COULD NOT AND SHOULD NOT BE PLACED WITH THE APPELLANT AND THAT IT WAS IN THE MINOR CHILD'S BEST INTEREST TO BE PLACED IN THE PERMANENT CUSTODY OF TUSCARAWAS COUNTY JOB AND FAMILY SERVICES."

I

{¶5} Appellant claims the trial court erred in awarding permanent custody of the child to appellee. Specifically, appellant claims the evidence does not support the determination that the child could not be returned to him within a reasonable time, and appellee has failed to prove that permanent custody is in the best interests of the child. 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} "(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.

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

{¶11} R.C. 2151.414(B) enables the court to grant permanent custody if the court determines by clear and convincing evidence that it is in the best interest of the child. "Clear and convincing evidence" is that which will produce 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.

{¶12} 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:

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

{¶14} "(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;

{¶15} "(3) The custodial history of the child***;

{¶16} "(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;

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

{¶18} The trial court substantiated its decision with five specific findings of fact, nos. 2-6. From our review, all of these facts are substantiated by the record and are basically uncontested by appellant's evidence.

{¶19} Appellant admitted at the time of the hearing, he was unable to assume even temporary custody of the child, and he did not know how long it would take for him to be properly prepared. T. at 178-179. He further admitted to not having a job, and was unaware of how much it would cost to raise a child. T. at 169-170.

{¶20} At the time of the hearing, a year and four months had passed since the original temporary custody orders. T. at 179. Appellant's inappropriate placement of the child with his sister had precipitated the original complaint for temporary custody. T. at 196.

{¶21} The original case plan included alcohol and drug assessment, counseling, parenting classes, stable housing, and employment. T. at 156-157. Appellee's caseworker, Christine Beeman, opined appellant never followed through on the plan. T. at 198-200. He had not demonstrated the ability to stay employed or to have stable housing. Id. Although appellant had asserted that he had various plans (building a room in the basement for his child and opening a used car lot), he did not follow through on them. Id. His latest house plan was to live in a trailer that his father gave him, rent free. T. at 183-184.

{¶22} Appellant readily admitted to not cooperating with the plan originally because he was frustrated and hostile to the social workers and counselors. T. at 184. Appellant claimed he now knew what to do and would do it. T. at 192. To his benefit, appellant completed parenting classes, but had a positive marijuana screening after completion. T. at 197. Appellant reacted appropriately when confronted with the child's negative behaviors, and appeared to have a good relationship with the child. T. at 118-

119. There was testimony that appellant was motivated toward sobriety. T. at 143. However, appellant never actually fulfilled his goals on assessment, and his prognosis for any change in personality disorder was extremely guarded. T. at 21. There was also concern that the child's emotional composition was not one of attachment.

{¶23} Although the child was in a residential facility at the time of the hearing, the child's prognosis was that six to twelve months of further counseling was needed. T. at 35.

{¶24} As noted by the trial court, the situation of caring for a troubled child has not been addressed by appellant. Appellant's ability to address these issues was severely doubted given the evaluations provided by clinical therapist Barbara Schwartz and chemical dependency counselor Dorothy Yoder.

{¶25} From our review of the evidence, we find there was clear and convincing evidence that appellant was afforded all of the services necessary to complete his case plan in the one year and four months since the temporary orders. To the date of the hearing, there was no successful completion. The evaluations of appellant by Ms. Schwartz are proof that any further time afforded to appellant would not result in any different outcome.

{¶26} As for the challenge on best interests of the child, we note appellee attempted to find relative placement, but that the attempt was unsuccessful. T. at 201-203. Ms. Beeman conceded that placement, whether it be foster or adopted parents, was not available at the time of the hearing. T. at 204-205. This is understandable as the child was currently in a residential group home because of emotional issues. Id. The child is in need of a "stable life" which appellant is unable to provide. T. at 200. The only stability the child has had was provided by appellee. The evidence supports

the claim that the child needs a restricted environment including therapy. T. at 32-33, 100.

{¶27} Appellant readily admitted to being unable to provide for the child at the present time. We find the testimony supports the determination that with the absence of any alternative relative placement, the best interests of the child are served by permanent custody to appellee.

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

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

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

By Farmer, P.J.

Gwin, J. and

Delaney, J. concur.

s/ Sheila G. Farmer_____

s/ W. Scott Gwin_____

s/ Patricia A. Delaney_____

JUDGES

SGF/jbp 0728

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

| | | |
|-------------------|---|-----------------------|
| IN THE MATTER OF: | : | JUDGMENT ENTRY |
| | : | |
| H.S. | : | |
| | : | |
| DEPENDENT CHILD | : | CASE NO. 2009AP040016 |

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

s/ Sheila G. Farmer_____

s/ W. Scott Gwin_____

s/ Patricia A. Delaney_____

JUDGES