

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

D.M. AND S.W.,

DEPENDENT CHILDREN

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09CA000013

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Guernsey County Court of
Common Pleas, Juvenile Division, Case
No. 07JC00349

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 28, 2009

APPEARANCES:

For Appellant,
Mother, Amber Williams

For Father,
Brian Williams

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Hoffman, P.J.

{¶1} Appellant Amber Williams (“Mother”) appeals the May 28, 2009 Journal Entry entered by the Guernsey County Court of Common Pleas, Juvenile Division, which terminated her parental rights, privileges, and obligations with respect to her two minor children, and granted custody of the children to Appellee Guernsey County Children Services Board (“the Board”).

STATEMENT OF THE FACTS AND CASE

{¶2} Mother is the biological mother of D.M. (D.O.B. 6/23/00), and S.W. (D.O.B. 12/13/03).¹ The Board began its involvement with the family shortly after the birth of D.M. in 2000, due to concerns Mother and D.M. were living in a home with no electricity, the atmosphere in the home was chaotic, and D.M. was not adequately supervised. At some point, Mother left Ohio with a truck driver and went to the State of Georgia. Mother left D.M. with her mother and her sister, who had a child in the custody in the Board at the time. The Board closed the case after Mother’s return, and she and D.M. moved in with Mother’s mother. The Board had provided services for over two years on that case.

{¶3} After the birth of S.W. in December, 2003, the Board investigated an allegation of neglect, which could not be substantiated, and the matter was closed on June 1, 2004. The Board subsequently received a referral for services due to the fact S.W.’s father, Brian Williams, a convicted sex offender from Pennsylvania, was

¹ The biological fathers of the children, Tom Phillips and Brian Williams, are not parties to this appeal.

frequently in the children's company. Additionally, a number of individuals were living in the household with Mother and the children, including her sister, her sister's boyfriend, and her sister's children, her grandmother, and her grandmother's boyfriend. On November 28, 2005, the Board received a referral alleging Brian Williams sexually abused D.M. The Board initiated a safety plan which required Williams to leave Mother's residence. Williams' probation officer also ordered him to leave the residence. This case was closed on December 21, 2005.

{¶4} During 2006, the Board received various referrals and intakes, and opened cases and rendered services for neglect and sexual abuse of the children. As a result of a May 18, 2006 sexual abuse referral, Brian Williams was convicted and sentenced on a charge of gross sexual imposition. On December 1, 2006, Mother signed a voluntary case plan for services. The trial court adjudicated the children dependent and the Board was awarded protective supervision on August 6, 2007, for a period of six months. The children were removed from Mother's care and placed in the temporary custody of the Board on October 15, 2007. On July 11, 2008, the trial court terminated temporary custody and ordered the children be returned to Mother's custody with the Board maintaining protective supervision. Mother had made progress in her mental health counseling and her counselor dismissed her with the caution Mother continue her medication and report back if she began to experience depression. Mother had obtained housing and employment.

{¶5} On November 7, 2008, the trial court again placed the children in the temporary custody of the Board as a result of Mother's permitting a number of people to live in her residence, which fact she denied to her case worker; Mother's being laid off

or terminated from her employment; her being evicted from her residence; and her discontinuing her medication and not resuming counseling as well as the children's sporadic attendance at counseling, acting out in school, and excessive absences.

{¶6} The Board filed a motion for permanent custody on February 6, 2009. The trial court conducted a hearing on the motion on May 18, 2009.

{¶7} Elizabeth Reed, a therapist at Cambridge Counseling Center, testified she is the counselor for both children in this matter, and Mother has been present with the children for family therapy. Reed began counseling D.M. in 2006. The child initially presented with issues of sexual abuse perpetrated upon him by Brian Williams, Mother's then-husband, as well as D.M.'s acting out sexually toward other children. Reed noted D.M.'s attendance at therapy had not been regular during times he was living with Mother, and as a result, his behavior regressed. Reed began counseling S.W. in 2007. While S.W. was living with mother, her attendance at counseling was irregular.

{¶8} Mother advised Reed the children's problems with attendance were the result of her inability to obtain transportation. In order to alleviate the problem, Reed scheduled several sessions at Mother's residence. Mother repeatedly failed to be present at her residence for those scheduled sessions. While D.M. and S.W. were in foster care, there were no problems with their attendance at counseling.

{¶9} According to Reed, D.M. was progressing well on his treatment goals. Reed noted, since D.M. has been in foster care, he has made significant progress in his problem areas and improved his functioning ability. S.W. is making moderate progress on her treatment goals. When asked if she had any concerns about Mother's ability to parent her children, Reed stated the concerns she had related more to Mother's history

than Mother's current behavior. Reed explained, when the children had been returned to Mother in the past, things went smoothly for a period of time, but when any stress arose, Mother did not and could not handle things well. Reed reiterated her concerns were not about how things were going currently, but whether Mother would be able to maintain once the children were returned to her.

{¶10} Dr. Gary Wolfgang, a licensed psychologist and clinical counselor, conducted a psychological evaluation of Mother in March, and April, 2007. Dr. Wolfgang conducted an interview, performed a mental status examination, and administered IQ and achievement tests. During the interview, Mother informed Dr. Wolfgang she previously had been diagnosed with attention deficit and hyperactivity disorder, and bipolar disorder. Mother had been prescribed medication, but discontinued using the prescriptions as such made her sleep all the time.

{¶11} Dr. Wolfgang diagnosed Mother with bipolar disorder, and personality disorder not otherwise specified, which means Mother has a mixed personality with antisocial and histrionic features. Dr. Wolfgang noted Mother was borderline in her intellectual functioning. Based upon the diagnoses, Dr. Wolfgang recommended Mother take psychotropic medications and make major life changes. The doctor noted psychotropic medication alone would not help Mother change her behavior because, although the medications would help her establish control of her moods, Mother needed to address a number of issues including interpersonal difficulties, lack of follow-through, and lack of conscientious responsibility in keeping appointments. Dr. Wolfgang stated Mother needed a lot of intervention to help stabilize her life and become free of family

conflict. The doctor indicated Mother would have multiple problems in parenting her children if she was unaided by medication, counseling, or behavioral changes.

{¶12} Cora Warehime, an attendance officer with the Ohio Valley Education Service Center, testified she visited Mother's home on September 17, 2008, to speak with Mother about D.M.'s school attendance. Warehime visited Mother's home the next day because D.M. again was not at school. When she arrived, no one was at the residence. Although Warehime left her business card in the door, she never received a call from Mother. Warehime and Wanda Gayle Thomas, the principal at D.M.'s school, made a home visit on September 19, 2008. Thomas advised Mother she had an informal meeting the following Monday, September 24, 2008. Warehime made a fourth home visit on September 30, 2008, but no one answered the door. Warehime again left her business card in the door, but never received a call back. Warehime explained she made the home visits because D.M. had not been at school. Warehime eventually spoke with Mother about the amount of school D.M. was missing, but Mother merely stated the child had missed the bus.

{¶13} Wanda Gayle Thomas, the principal at Brook Elementary School, testified her first contact with D.M. was when he was in kindergarten as a result of behavioral problems. Thomas addressed the problems with Mother, who informed the principal she would speak with D.M. D.M.'s problem behavior continued. One morning while Thomas was signing in students for breakfast, D.M. approached her and showed her a ring, which the boy told her he had been given by an adult male whom he described as his friend. Something D.M. said concerned Thomas, so she discussed the situation with

the school guidance counselor and social worker. Thomas subsequently learned D.M. had been removed from Mother's home. With regard to the current school year, Thomas stated D.M. began the year with behavioral problems and significant absences. Between September 5, 2008, and January 9, 2009, D.M. had ten unexcused absences and six tardies. Thomas noted D.M.'s behavior and attendance had improved since being removed from Mother's home.

{¶14} Sylvia Lawson, an ongoing caseworker with the Board, detailed Mother's extensive involvement with the Board. Lawson noted Mother's first case plan was opened shortly after D.M.'s birth in 2000, due to concerns regarding Mother and D.M. living in a home without electricity, Mother's failure to adequately supervise D.M., and Mother's ignoring medical advice for the child. The Board eventually closed the case. In March, 2003, the Board received a report D.M. had been burned with an electrical wire. In May, 2004, the Board became involved with the family again due to concerns over the supervision of the children and the inappropriate administration of S.W.'s medication. The Board also received a physical abuse report in September, 2004. The department received a referral in November, 2005, over concerns D.M. had been sexually abused by Mother's husband, Brian Williams. In March, 2006, the Board conducted an intake investigation after receiving a report Mother allowed Williams to be around D.M. The allegations of sexual abuse were substantiated in May, 2006, and Williams was charged with sexually abusing D.M. Williams was eventually convicted and sentenced on the charge.

{¶15} The current case opened in October, 2008, after the Board received an intake report involving D.M.'s sexually abusing other children, and Mother's permitting

D.M. to miss a number of counseling appointments. Lawson testified about the requirements of Mother's case plan and her compliance therewith. Under the case plan, Mother was to provide appropriate supervision of the children; not allow D.M. to be unsupervised around other children under the age of eight; maintain safe, secure and stable housing; ensure D.M. and S.W. attended counseling and follow all recommendations of the counselor; engage in mental health services for herself; and attend visitation with the children. Lawson noted Mother was not in compliance with the case plan. Mother did not want to attend counseling because she did not believe she needed it. Mother did not ensure the children attended their scheduled counseling sessions. Further, Mother had been evicted because the apartment manager had concerns about the number of people coming and going in to the residence. Mother also continued to allow D.M. to be alone with other children despite being reminded numerous times not to do so. Finally, Mother continued to leave the children with individuals with histories of sexual abuse.

{¶16} Lawson indicated S.W. had been sexually abused when Mother was not supervising the child. Lawson had to frequently remind Mother not to bring other individuals to her visits with her children both at the Board and at her home. In other words, the Board continued to have the same concerns over Mother's ability to parent which it had when it began its involvement with the family in 2000. Mother claimed she was unable to attend counseling for the two months immediately preceding the permanent custody hearing because she had lost her medical card. Lawson stated Mother remained eligible for the medical card and all she was required to do was have an interview with a case worker. Although Mother was aware of this requirement, she

failed to follow through and have the interview. Mother failed to show for three appointments scheduled at the Cambridge Counseling Center in 2009.

{¶17} Via Journal Entry filed May 29, 2009, the trial court terminated Mother's parental rights, privileges and responsibilities with respect to D.M. and S.W., and granted permanent custody of the children to the Board.

{¶18} It is from this journal entry Mother appeals, raising as her sole assignment of error:

{¶19} "I. THE JUDGMENT OF THE TRIAL COURT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN THAT GUERNSEY COUNTY CHILDREN SERVICES BOARD FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE APPELLANT'S PARENTAL RIGHTS SHOULD BE TERMINATED."

{¶20} This case comes to us on the expedited calendar and shall be considered in compliance with App. R. 11.1(C).

I

{¶21} In her sole assignment of error, Mother challenges the judgment of the trial court as against the manifest weight of the evidence. Mother asserts the Board failed to show by clear and convincing evidence her parental rights should be terminated.

{¶22} 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* (Feb. 10, 1982), Stark App. No. CA5758. 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 Constr.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶23} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing, and provide notice, upon filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶24} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, 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; (b) the child is abandoned; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶25} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following: (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; (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; and (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.

{¶26} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶27} If the child is not abandoned or orphaned, then the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R .C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶28} Mother argues the trial court's findings were unsupported by the evidence and testimony presented. Mother asserts there was testimony which established she had engaged in case plan services. Elizabeth Reed, the children's therapist, testified Mother recognized the children's need to be in counseling and the importance of the counseling. Reed also stated Mother attended the family counseling sessions, openly participated, and did all she was asked to do. According to Mother, Sylvia Lawson, the ongoing caseworker, testified Mother completed parenting classes, maintained

employment, and had her own housing. Mother submits the testimony revealed the children were bonded with her. Mother adds the guardian ad litem did not recommend permanent custody to the Board in order to give Mother additional time to work on her case plan because of her compliance.

{¶29} Although there was testimony Mother was currently complying with the case plan, the evidence also revealed Mother did not follow through with many of the requirements. Mother had only been living at her current residence for two months. She had been evicted from her prior residence because the apartment manager had concerns over the number of people coming and going. Mother did not attend her own counseling because she did not have a medical card. Mother only needed to meet with a caseworker in order to re-obtain the card. Mother never did so, and could not explain why she had not done so. Mother had not held a job longer than a couple of months.

{¶30} Dr. Wolfgang testified Mother suffers from bipolar disorder and personality disorder not otherwise specified, and Mother was borderline in her intellectual functioning. Although psychotropic medication would help stabilize Mother's moods, Dr. Wolfgang stated Mother needed to make major life changes in order to appropriately parent. Elizabeth Reed did acknowledge Mother's participation in the children's counseling and expressed no concerns about Mother at the current time. Reed noted, however, Mother's history concerned her as Mother would function appropriately for a period of time, then fall back into her old ways if things became stressful. Reed was not convinced Mother would be any different at this point. The testimony further revealed the same concerns which prompted the Board's involvement in 2000, remained at the time of the hearing.

{¶31} Based upon the foregoing and the entire record in this matter, we find the trial court's decision to terminate Mother's parental rights, privileges and responsibilities and grant permanent custody of the child to the Board was not against the manifest weight of the evidence, and was supported by clear and convincing evidence.

{¶32} Mother's sole assignment of error is overruled.

{¶33} The judgment of the Guernsey County Court of Common Pleas, Juvenile Division, is affirmed.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

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

IN THE MATTER OF:
D.M. AND S.W.,
DEPENDENT CHILDREN

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JUDGMENT ENTRY

Case No. 09CA000013

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

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS