**[Cite as *In re J.C.*, 2009-Ohio-5656.]**

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| | : | JUDGES: |
| IN THE MATTER OF: | : | William B. Hoffman, P.J. |
| | : | Julie A. Edwards, J. |
| J.C. | : | Patricia A. Delaney, J. |
| | : | |
| | : | Case No. 2009 AP 06 0033 |
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| | : | O P I N I O N |

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| CHARACTER OF PROCEEDING: | Civil Appeal from Tuscarawas County Court of Common Pleas, Juvenile Division, Case No. 07 JN 00647 |
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT ENTRY: | October 20, 2009 |

APPEARANCES:

For Appellee

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*Edwards, J.*

**{¶1}** Appellant, Jessica Campbell, appeals a judgment of the Tuscarawas County Common Pleas Court, Juvenile Division, granting permanent custody of her son J.C. (DOB 1/4/07) to appellee Tuscarawas County Job and Family Services (TCJFS).

STATEMENT OF FACTS AND CASE

**{¶2}** When appellant was 16 years old, she began a relationship with Steven Wright. Appellant dropped out of high school, got a job at Walmart, and moved in with Wright when she was 17 years old. The couple had two children, K.W. and R.W., both of whom have been in the legal custody of Steven Wright since 2006.

**{¶3}** Appellant and Steven Wright moved in with Richard Campbell when they could no longer live with family members. Richard's first wife was killed in an automobile accident in 2004. Richard and Steven had worked together at McDonald's. Richard had two children from his first marriage, Au.C. and A.C. In 2005, appellant and Richard Campbell became romantically involved, and eventually married in May of 2006 when appellant was pregnant with J.C. Appellant adopted Au.C. and A.C., and gave birth to K.C. approximately one year after J.C.

**{¶4}** Richard Campbell took a job as a truck driver. Richard became concerned about appellant's treatment of the children when he was on the road based on "rumors" he heard around town. He saw appellant break furniture and say negative things about his first wife in front of the children. Appellant also interfered with visitation between Au.C. and A.C. and their maternal grandparents. Richard believed the children were emotionally abused by appellant.

**{¶5}** An incident of domestic violence occurred between Richard and appellant in front of the children on November 2, 2007. Appellant filed a police report and Richard was charged with domestic violence. The charge was eventually reduced to disorderly conduct.

**{¶6}** After the incident of domestic violence, TCJFS became involved with the family. In 2006, Richard and appellant had been placed in a diversion program by TCJFS based on allegations of abuse and unexplained marks on the children, but, according to Richard, they did not successfully follow through with the diversion program.

**{¶7}** TCJFS filed a complaint in Case No. 2007JN00647 on November 6, 2007, alleging that A.C., Au.C., and J.C. were neglected and dependent. At an adjudicatory hearing on December 5, 2007, appellant admitted to neglect and dependence. Au.C. and A.C. were placed in the temporary custody of their maternal grandparents. J.C. was placed in the temporary custody of TCJFS. K.C. was born on January 6, 2008, and a complaint was filed alleging her to be dependent on January 7, 2008. Appellant admitted to the allegation of dependency, and K.C. was placed in the temporary custody of TCJFS.

**{¶8}** Appellant agreed to a case plan requiring her to attend parenting classes, complete a psychological assessment, complete anger management counseling, get a job and find stable housing. Appellant attended parenting classes and completed a psychological assessment. She attended anger management counseling for nine months but stopped attending her sessions. Appellant claimed to have employment but never produced proof of employment. She stated that her boss would not give her proof

of employment because she is paid in cash under the table. Appellant and Richard Campbell divorced, but she continues to spend the night with him from time to time. Appellant lives with her grandmother. Her father also lives with her and her grandmother. According to appellant, her father drinks and the home where he is living is not an appropriate home for her children.

**{¶9}** On January 9, 2009, TCJFS filed a motion to modify its prior disposition, seeking permanent custody of J.C. and K.C. The case proceeded to trial on April 2, 2009, and May 12, 2009. A.C. and Au.C. were placed in the legal custody of their maternal grandparents prior to the start of the hearing concerning J.C. and K.C. Appellant did not appear for the second day of the hearing, as she was serving a 5-day jail sentence for failure to pay child support for R.W. and K.W. Following trial, the court granted appellee's motion for permanent custody. Appellant assigns two errors on appeal:

**{¶10}** "I. THE TRIAL COURT ERRED IN RELYING UPON THE TESTIMONY OF THE CLINICAL THERAPIST TO THE EXTENT THAT THE TESTIMONY CONTAINED INADMISSIBLE HEARSAY.

**{¶11}** "II. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING PERMANENT CUSTODY TO JOB AND FAMILY SERVICES AS JOB AND FAMILY SERVICES FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE CHILDREN COULD NOT BE PLACED WITH MOTHER IN A REASONABLE AMOUNT OF TIME, AND THAT AN AWARD OF PERMANENT CUSTODY WAS IN THE CHILDREN'S BEST INTEREST."

I

**{¶12}** In her first assignment of error, appellant argues that the court erred in admitting inadmissible hearsay in the testimony of Barbara Schwartz, the clinical therapist who conducted appellant's psychological exam. Appellant argues she was prejudiced by this evidence because it was the only evidence of physical abuse against the children.

**{¶13}** Appellant argues the court erred in overruling her objection to the following testimony:

**{¶14}** "Q. Okay. Let's move to the next paragraph. Uh, you reviewed some records in, um, in addition to your, uh, talking with Miss Campbell, is that correct?

**{¶15}** "A. That's correct.

**{¶16}** "Q. Um, in the middle of that, um, paragraph, you describe what the records document, could you please, uh, tell that to the Court and expand on that if you find it necessary?

**{¶17}** "A. Records documented multiple incidents of Jessica Campbell's explosive anger, threats, profanity…

**{¶18}** "ATTORNEY JOHN BRECHBILL: Your Honor, I'll object to the hearsay nature of the testimony. I have no idea where this is coming from, the basis of any of it, the foundation for any of it.

**{¶19}** "COURT: Do you have a response, Jeff?

**{¶20}** "Q. Uh, she's a party, Your Honor, she gave this, um, she said this to the counselor, um, knowingly, and knowing it would be used in an assessment of her parenting ability. Um, I believe it's entirely relevant. Um, I believe we laid a good

foundation as it was a, an assessment in conjunction with, um, Job and Family Services obtaining custody of her children.

**{¶21}** "COURT: Overruled, she can answer.

**{¶22}** "Q. Could you please just start over with that records document?

**{¶23}** "A. Okay. Records document multiple incidents of Miss Campbell's explosive anger, threats, profanity, and name calling directed at Mr. Wright in front of the Wright two young children. Custody was granted to Mr. Wright in 2006, and Jessica visited the children in his home." Tr. At 19-20.

**{¶24}** Appellant argues that the reference to statements included in "records" constituted inadmissible hearsay. However, the testimony is a direct quote from the written report of appellant's psychological assessment. Appellant did not object to the admission of the report into evidence. Tr. 8. Further, appellant does not assign error on appeal to the admission of this hearsay through the written report. Therefore, appellant cannot demonstrate prejudice from any alleged error in admitting the testimony concerning statements contained in outside records because the same evidence was admitted in the written assessment. The evidence through Schwartz's testimony is merely cumulative of the written report.

**{¶25}** The first assignment of error is overruled.

II

**{¶26}** In her second assignment of error, appellant argues that the judgment finding that the children could not be placed with appellant within a reasonable time and that permanent custody is in the best interests of the children is against the manifest weight of the evidence, and the evidence does not support the court's findings

concerning these issues. Appellant argues that given an extension of time to complete counseling, she would be able to parent the children.

**{¶27}** A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact 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 required beyond a reasonable doubt, as in criminal cases." *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118; *In re: Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 481 N.E.2d 613.

**{¶28}** In reviewing whether the trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54, 60; See also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. If the trial court's judgment is "supported by some competent, credible evidence going to all the essential elements of the case," a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74, 564 N.E.2d 54.

**{¶29}** Moreover, "an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law." Id. Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court

explained in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273:

**{¶30}** "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony."

**{¶31}** Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 419, 674 N.E.2d 1159; see, also, *In re: Christian*, Athens App. No. 04CA10, 2004-Ohio-3146; *In re: C. W.,* Montgomery App. No. 20140, 2004-Ohio-2040.

**{¶32}** Pursuant to 2152.414(B)(1), the court may grant permanent custody of a child to the movant if the court determines "that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that any of the following apply:

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

**{¶34}** Revised Code 2151.414(E) sets forth the factors a trial court must consider in determining whether a child cannot or should not be placed with a parent within a reasonable time. If the court finds, by clear and convincing evidence, the

existence of any one of the following factors, “the court shall enter a finding that the child cannot be placed with [the] parent within a reasonable time or should not be placed with either parent”:

**{¶35}** “(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 parent to remedy the problem that initially caused the child to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions that caused the child to be placed outside the child's home. In determining whether the parents have substantially remedied the 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.* * *

**{¶36}** “(16) Any other factors the court considers relevant.”

**{¶37}** A trial court may base its decision that a child cannot or should not be placed with a parent within a reasonable time upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with the parent within a reasonable time. See *In re: William S*. (1996), 75 Ohio St.3d 95, 661 N.E.2d 738; *In re: Hurlow* (Sept. 21, 1998), Gallia App. No. 98 CA 6, 1998 WL 655414; *In re: Butcher* (Apr. 10, 1991), Athens App. No. 1470, 1991 WL 62145.

**{¶38}** The trial court found that the children could not be placed with either parent within a reasonable time, and that despite diligent, reasonable efforts and

planning by appellee to remedy the problems which caused removal of the children, both parents have failed to substantially remedy the conditions causing removal. The trial court's finding is not against the manifest weight of the evidence.

**{¶39}** Barbara Schwartz testified that appellant denied all allegations of abuse, claiming that A.C. had walked into a cart at Walmart and had walked into a countertop, causing black eyes. Appellant told her that the kids were "brainwashed to say things by the Welfare and their grandparents." Tr. 10. The results of appellant's MCMI III test showed that she was experiencing a severe mental disorder, did not see the world accurately, and had a delusional disorder. Appellant has no accountability for her present life situation, histrionic personality traits, obsessive-compulsive disorder and maladaptive functioning. Appellant has a high level of anger and views the world as threatening. Schwartz testified that appellant has no empathy for her children and thinks only of herself. Appellant demonstrated no insight into her issues and her prognosis is guarded to poor. Schwartz testified that on the Global Assessment of Functioning appellant showed significant impairment, indicating an inability to perform daily tasks including parenting a child. According to Schwartz appellant would need weekly intensive therapy for a period of two years to have a possibility of stabilizing her life.

**{¶40}** William Buchwald was appellant's counselor when she was referred for anger management counseling. She participated in 24 sessions of therapy. Buchwald testified that appellant showed some degree of insight into her problems, but after a session in which she started to talk about the bad feelings she had regarding her treatment of her children, she quit coming to counseling. He testified that he did not see

evidence of a delusional disorder as diagnosed by Schwartz, but he did believe appellant had a mood disorder and was possibly bipolar, and saw signs of a personality disorder.

**{¶41}** Richard Campbell testified that appellant told his children that she was glad their mommy was dead and called their mother a bitch in front of the children. He believes that she hit his children. In spite of this belief and in spite of the no contact order between he and appellant as a result of the domestic violence case, he and appellant continued to see each other and he thought about "giving it a shot with [appellant] again." Tr. 169.

**{¶42}** Susan Legg is a family service aide for TCJFS who supervised appellant's visits with J.C., K.C., R.W and K.W. She testified that visits were chaotic and appellant had no control over J.C. and R.W. during the visits. She did not discipline the kids during visits and J.C. would hit appellant, throw his toys, and scream. When the aide suggested a timeout, appellant did not follow through. She testified that appellant appeared to have no emotional connection to the children and was not nurturing toward the children.

**{¶43}** Jamie Grunder, the case manager assigned to appellant's case through TCJFS, testified that appellant quit counseling in September of 2008 without completing the program. She testified that appellant made it clear to her that appellant was not going to discipline the kids during visits. She testified that appellant had not fixed the problems that led to the removal of the children. She testified that J.C. had behavioral problems requiring medication, and that he was an angry child particularly after visitation with appellant. She also testified that the agency offered to pay for one-half of

the cost of services offered to appellant and Richard but appellant did not accept that offer, despite her claim that she quit counseling for financial reasons.

**{¶44}** Appellant testified that her only responsibility for her current situation was engaging in the one fight with Richard that led to the domestic violence charge. She testified that she did not agree with the psychological evaluation because her wording was twisted and it was based on other papers and information received from Richard. She testified that she was employed at West Virginia Gas earning $10.00 an hour in cash, but verification of her employment was not available to her from her employer because she was paid under the table. She testified that her housing would be stable if her dad wasn't living in the same home. She testified that she tries to stay away from him when he's drinking and she could not take her kids to live in the same home with him. She did not pay rent or utilities in her grandmother's home.

**{¶45}** Appellant owed $4,000.00 - $5,000.00 in child support. She testified that she had enough money in a lock box to take care of the support payment, but hadn't paid it because she doesn't "have a way down there." Tr. 141. She had been sentenced the day before the permanent custody hearing to five days in jail for nonsupport. She testified that she quit counseling because she couldn't afford it because she needed the money in the lock box to pay her child support. She then testified that she didn't use the money in the box for her support payments and counseling sessions because, "I was kind of seeing, waiting to see the way things went between me and [Richard] and what we were going to do." Tr. 147.

**{¶46}** Appellant admitted she was not prepared to have the children live with her at the time of trial and that she had not completed her case plan:

**{¶47}** "Q. Okay. Why should the Court give you back your children today?

**{¶48}** "A. I don't think today but if I pursue my counseling and finish making progress on that and get a house and a couple other things I need to finish getting taken care of, then that would be…

**{¶49}** "Q. But you knew this day was coming at least for several months, these motions were filed several months in advance…

**{¶50}** "A. Yes.

**{¶51}** "Q. You knew this day was coming you could have gotten back into your counseling at that point, right?

**{¶52}** "A. Yes.

**{¶53}** "Q. But you chose not to do so?

**{¶54}** "A. Yes.

**{¶55}** "Q. Why?

**{¶56}** "A. Um, there's other things too besides the case plan I've been working on. I got my GED and started school of ministry, Duncan Falls, and I'm going to be checking into nursing school.

**{¶57}** "Q. Would you agree your children are the number one thing in your life?

**{¶58}** "A. I want them to be but right now they're not with me and…

**{¶59}** "Q. I didn't ask if they were with you, let me put it another way, are your children the most important thing in your life to you?

**{¶60}** "A. Yes.

**{¶61}** "Q. Okay, but you chose to do these other things, besides your case plan, when you knew the case plan was what you had to do to get your children back?

**{¶62}** “A. Yes, but some of these other things is going to be better for me financially and that too.

**{¶63}** “Q. Better for you, right?

**{¶64}** “A. Right, yeah, but that would be a better future for the kids also.” Tr. 151-153.

**{¶65}** The court’s finding that the children could not be placed with appellant within a reasonable time was supported by the evidence.

**{¶66}** Appellant also argues that the trial court's finding that it was in the children's best interest that permanent custody be granted to the agency was against the manifest weight of the evidence.

**{¶67}** 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.

**{¶68}** J.C. had been in foster care from the time he was an infant and K.C. had been in foster care her entire life. Appellant did not discipline the children at visits, which was particularly a problem with J.C. who has severe behavioral problems. There was evidence that appellant did not emotionally connect to the children and visits were

chaotic. J.C. and K.C. did well in foster care and the foster family was willing to adopt both children. The court's finding that permanent custody was in the best interest of the children was not against the manifest weight of the evidence.

**{¶69}** The second assignment of error is overruled.

**{¶70}** The judgment of the Tuscarawas County Common Pleas Court, Juvenile Division, is affirmed.

By: Edwards, J.

Hoffman, P.J. and

Delaney, J. concur

s/Julie A. Edwards

s/William B. Hoffman

s/Patricia A. Delaney

JUDGES

JAE/r0924

**[Cite as *In re J.C.*, 2009-Ohio-5656.]**

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

s/Julie A. Edwards

s/William B. Hoffman

s/Patricia A. Delaney

JUDGES