[Cite as *In re Z.M.*, 2009-Ohio-5793.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	JUDGES:
	Hon. Sheila G. Farmer, P.J.
Z.M. AND R.H.	Hon. William B. Hoffman, J.
	Hon. John W. Wise, J.
MINOR CHILD(REN)	
	Case Nos. 2009CA00140
	2009CA00141
	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Juvenile Division, Case Nos. 2007JCV1247 and 2007JCV1226

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 19, 2009

APPEARANCES:

For Appellant	For Appellee
AARON KOVALCHIK	JAMES B. PHILLIPS
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Canton, OH 44702	

Farmer, P.J.

{¶1} On October 11, 2007, appellee, the Stark County Department of Jobs and Family Services, filed a complaint for temporary custody of Z.M. born March 7, 2006, alleging the child to be dependent, neglected, and/or abused (Case No. 2007JCV001247). Mother of the child is appellant, Billie McCrady; father is unknown. Emergency temporary custody was given to appellee. On December 13, 2007, the trial court found the child to be dependent and continued the order of temporary custody to appellee.

{¶2} On April 10, 2008, appellee filed a motion to return the child to appellant with protective supervision.

{¶3} On May 15, 2008, appellant gave birth to R.H.; father is Cordaro Hancox.

{¶4} On June 4, 2008, the trial court granted the motion on returning Z.M. to appellant with protective supervision.

{¶5} On October 31, 2008, appellee filed a complaint for temporary custody of R.H. alleging dependency and seeking protective supervision (Case No. 2007JCV001226). The trial court granted the request of protective supervision.

{¶6} On November 14, 2008, appellee filed motions for temporary custody of both Z.M. and R.H. By judgment entries filed November 18, 2008, the trial court granted the motions.

{¶7} By judgment entry filed November 26, 2008, the trial court found R.H. to be dependent and continued the order of temporary custody to appellee.

{¶8} On February 20, 2009, appellee filed motions for permanent custody of both children. A hearing was held on April 28, 2009. By judgment entries filed May 8,

2009, the trial court granted permanent custody of the children to appellee. Findings of fact and conclusions of law were filed same date.

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

I

{¶10} "THE TRIAL COURT HAD NO IN PERSONAM JURISDICTION AND ERRED WHEN IT GRANTED THE MOTION FOR PERMANENT CUSTODY SINCE JOHN DOE WAS NOT PROPERLY SERVED WITH THE MOTION FOR PERMANENT CUSTODY."

II

{¶11} "THE JUDGMENT OF THE TRIAL COURT THAT THE MINOR CHILDREN CANNOT OR SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

III

{¶12} "THE JUDGMENT OF THE TRIAL COURT THAT THE BEST INTERESTS OF THE MINOR CHILDREN WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I

{¶13} Appellant claims an error in the publication notice to "John Doe" divested the trial court of jurisdiction in her case. We disagree.

{¶14} The personal jurisdiction issue does not pertain to her case. In its findings of fact and conclusions of law filed May 8, 2009, the trial court noted the following:

{¶15} "These matters were heard on April 28, 2009 before Judge Michael L. Howard, on Motions for Permanent Custody filed by the Stark County Department of Job and Family Services (hereinafter SCDJFS or the agency) on February 20, 2009.

{¶16} "***

{¶17} "On February 20, 2009, the SCDJFS filed Motions for Permanent Custody of both children. Service was perfect on all parties. (It came to the Court's attention in the [R.H.] file that the John Doe publication incorrectly stated the hearing date as April **29**, 2009 not April **28**, 2009. However, no person presented to the Court on either day and purported to be a father or any other interested party.) Trial was scheduled for April 28, 2009.***"

{¶18} We find this error is not fatal to the trial court's determination on appellant's rights. The trial court had personal jurisdiction over appellant and she appeared and defended the action.

{¶19} Assignment of Error I is denied.

II, III

{¶20} Appellant claims the evidence does not support the conclusion that she cannot be reunited with her children within a reasonable time, and the trial court's granting of permanent custody of the children to appellee is not in the children's best interests. We disagree.

{¶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. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson,* 66 Ohio St.3d 610, 614 N.E.2d 742, 1993-Ohio-9.

{¶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} "(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

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

{¶27} R.C. 2151.414(B) enables trial courts to grant permanent custody if the court determines by clear and convincing evidence that it is in the best interest of the child. 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:

{¶28} "(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;

{¶29} "(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;

{¶30} "(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***;

{¶31} "(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;

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

{¶33} In finding of fact nos. 4 and 5, the trial court determined the following on appellant's ability to complete the case plan:

{¶34} "Though Mother has been fairly compliant on her case plan, she lacks follow through on her promises to complete tasks and has shown a repeated pattern of instability. Mother has not addressed her mental health issues. Mother has a municipal court criminal case were (sic) she was ordered to pay fines and do community service. She has not paid the fines and only completed 36 of 100 hours of community service. More time to work the case plan would not be beneficial due to Mother's pattern of instability. The current concerns for the children are the same as those expressed in the initial complaint in [Z.M.'s] case 18 months ago.

{¶35} "Mother also testified. She currently lives by herself and is employed at Luna's Restaurant for serving and kitchen work. Mother has had three jobs in the last four years. Mother admitted that one job loss was due to an accusation of theft and lack of childcare. Mother does have a conviction for a theft. She shoplifted at WalMart.

Because both children were present with her at the time of the incident, they were removed from her custody. Mother acknowledges having missed appointments with Community Services of Alliance. As an excuse she cites her evictions, moving to Canton, problems with scheduling conflicts caused by her court ordered community service requirements. Mother indicates she had trouble getting an appointment with Coleman Center but has gotten the intake done. Mother has not had the psychiatric evaluation done. Mother acknowledges the pending eviction but states the landlord would work with her. This is not consistent with the worker's testimony. Mother wants another chance to get things together."

{¶36} It is appellant's position that she had completed or was in the process of completing the case plan and should have been given more time to comply and/or more consideration should have been given to what she had already completed.

{¶37} Appellant's case plan consisted of a Quest assessment, a parenting evaluation through Northeast Ohio Behavioral, complete psychiatric testing, and participate in individual counseling. T. at 17, 18. Appellant was also required to maintain stable housing and employment. T. at 19.

{¶38} Appellant completed a Quest assessment. T. at 17. She also completed a parenting evaluation through Northeast Ohio Behavioral. T. at 17-18. However, appellant did not complete her psychiatric testing or individual counseling. T. at 19-20. She had been evicted four times in four years. T. at 20. There was a pending eviction at the time of the hearing. T. at 21. Appellant did not find employment until just before the hearing, and she was "on-call" until business picked up. T. at 21-22.

{¶39} Appellant explained she did not follow through with her psychiatric testing and individual counseling because she got evicted and had to move from Alliance to Canton and had trouble scheduling appointments with her counselor. T. at 32. After switching from Community Services to the Coleman Center, appellant was told to complete her court ordered community service first because it was interfering with the scheduling of appointments. T. at 33. There was a current eviction pending, but appellant testified to have worked out a settlement with the landlord. T. at 30. The "settlement" would cost appellant $961.00. T. at 39. Appellant has a past history of not following through on housing plans. T. at 21. Appellant recently obtained a job, but at the time of the hearing, she had yet to be trained. T. at 30, 35. She was fired from one job due to a theft allegation. T. at 35.

{¶40} Appellant was convicted of theft from a Wal-Mart. T. at 36. Her children were present during the incident. Id.

{¶41} The caseworker characterized appellant as "fairly compliant" with the case plan, but testified appellant did not follow up or continue the course prescribed. T. at 22. The major concern is that nothing has really changed since the beginning of the case. T. at 23. The caseworker testified, "[t]he same concerns are still present now as they were back then: the instability; no employment; housing is kind of touch and go, whether she will remain in the housing; she still has not addressed other issues, her mental health issues and so forth." T. at 24.

{¶42} The father of Z.M. is unknown; the father of R.H. has no interest in custody and he did not fulfill the requirements of the case plan. T. at 16-17.

{¶43} Upon review, we find the trial court did not err in its findings regarding reunification within a reasonable time.

{¶44} As for best interests, although appellant and the children do well at supervised visits, there are no problems with separation. T. at 42. Both children have strong bonds to the same foster parents who are willing to adopt them. T. at 42-43. The caseworker opined the "children need stability and they need a safe and stable home where they can, they don't have to feel that they're going to be homeless somewhere. They know that somebody's gonna take care of them." T. at 43. Appellant has not been able to provide stability. Id.

{¶45} In its ruling on best interests at no. 3, the trial court found extending temporary custody to permit appellant to work on her case plan would not be in the children's best interest because appellant would be unable to remedy the problems given extra time:

{¶46} "THEREFORE, the Court finds that extending temporary custody of either [Z.M.] or [R.H.] to allow the parents to work on their case plan is not in the children's best interest. It appears from the evidence that the parents will not be able to remedy the initial problems in this case any time within the foreseeable future."

{¶47} This conclusion is supported by the unrefuted evidence.

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

{¶49} Assignments of Error II and III are denied.

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

By Farmer, P.J.

Hoffman, J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/sg 0928

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	
	:	JUDGMENT ENTRY
Z.M. AND R.H.	:	
	:	
MINOR CHILD(REN)	:	CASE NOS. 2009CA00140
	:	2009CA00141

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

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES