[Cite as *In re Cihon*, 2009-Ohio-5805.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
IN THE MATTER OF:	:	Sheila G. Farmer, P.J.
	:	Julie A. Edwards, J.
MIKAELA CIHON	:	Patricia A. Delaney, J.
	:	
(A Minor Child)	:	
	:	Case No. 09 CA 00002
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal From Guernsey County Court of Common Pleas, Juvenile Division, Case No. 08 JG 00243
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 2, 2009
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant
SHAWN P. LINDSAY 201 N. Main Street P.O. Box 272 Uhrichsville, Ohio 44683	LYNN WRIGHT 1505 Clairemont Avenue Cambridge, Ohio 43725

Edwards, J.

{¶1} Appellant, Michael Cihon, appeals a judgment of the Guernsey County Common Pleas Court, Juvenile Division, naming appellee, Lynn Wright, the residential parent of the parties' minor child, Mikaela Cihon.

STATEMENT OF FACTS AND CASE

{¶2} Appellee moved from New York to Guernsey County, Ohio, to reside with appellant on Thanksgiving Day, 2001. Appellant and appellee met on the internet. Mikaela was born on October 23, 2002. The parties lived together with Mikaela until April of 2008, when appellee moved out of appellant's home. She initially moved to Haven of Hope, where she resided until she was kicked out. After leaving Haven of Hope, she stayed in Guernsey County. However, she began to make plans to move to Florida to live with her sister, taking the child with her. On April 17, 2008, appellant filed a complaint seeking custody of Mikaela. The case proceeded to trial.

{¶3} Appellee gave birth to eight children before Mikaela: Jeffrey, age 28; Sarah, 26; Thomas, 24; Samantha, 20; Amber, 19; Melanie, 15; Garrett, 13; and Jack, 11. Appellee did not raise any of these children to the age of majority. According to appellee's testimony at trial, Jeffrey was raised by her parents from birth because she was only 17 years old when he was born. Sarah was taken away by her father who "took off" with her, and ended up in a children's psychiatric hospital. Appellee voluntarily surrendered Thomas to Social Services in New York. She testified that she raised Samantha herself for a period of time, but Samantha then lived with her father. Amber had not lived with appellee since she was young, and was raised by her father.

Melanie was conceived when appellee was raped in California, and appellee gave her up for adoption at birth. Garrett and Jack live with their father in New York.

{¶4} According to appellant's understanding, Jeffrey was adopted by appellee's parents. Sarah and Thomas were taken by Children's Services, and Thomas was adopted by a family while Sarah was raised in an institution. Amber and Samantha were abandoned at their respective grandmother's homes at the age of 3 and 2 when appellee moved to California. Prior to trial, he had not heard that Melanie's father raped appellee, but appellee told him that Melanie's father was an abusive drug addict and she gave Melanie up for adoption at birth. He believed Garrett and Jack were taken away from appellee by the court in New York for neglect and were in the custody of their dad.

{¶5} Appellee worked for Tastee Apple for three seasons while living in Ohio. Other than this part-time seasonal employment, appellee was not employed while living with appellant. She planned to move to Florida to live with her sister and her brother-in-law. Appellee's sister lived in a two-bedroom house, and appellee and Mikaela would stay in one of the bedrooms. Appellee spoke to the manager of a Starbucks near her sister's home on the telephone and believed she had employment at the coffee shop after she moved. Her brother in New York also planned to move to Florida, and she and her brother intended to buy a home together where they would live with Mikaela. Appellee testified that her parents were Jehovah's Witnesses, which she considered to be a cult, and she was raised to believe the world would end in 1975. Because of this, she never felt the need to learn how to take care of herself.

{¶6} According to appellant, appellee told him he would never see Mikaela again after she moved to Florida. While, at trial, she testified that she would facilitate visitation between Mikaela and appellant after she moved, appellant played a tape recording of appellee saying, "When I go to Florida, you're done." Tr. (III) 56. Appellant expressed concerns about appellee's mental health because she blames everything that happens on someone else. He is afraid that she'll give up Mikaela if she is unable to care for her, as she has in the past with her other children.

{¶7} Dr. Gary Wolfgang conducted a psychological analysis of appellee in conjunction with the instant action. While the report was filed under seal, portions of Dr. Wolfgang's findings were read into the transcript during the questioning of appellee. Dr. Wolfgang found that appellee's "longstanding difficulties in relationships and parenting suggest difficulties of a personal and interpersonal nature that combine to produce dysfunctional outcomes in her life. Tr. (III) 46-47. He further found that she "would seem to have little insight into these various tendencies, and thus, would seem to be at risk for repeating them. Tr. (III) 48-49. However, he also found that "the custody of many of [appellee's] children were lost when she was quite young amid conflict with her family of origin and amid relationships that were troubling her at the time. At one point she was homeless and largely unable to care for herself, let alone a child. At this point she is older and presumably more stable and established." Tr. (III) 62-63.

{¶8} Appellant was employed at Kimble Manufacturing Co. as a purchasing agent, earning $30,000.00 a year. He lives rent-free in a home owned by his aunt, Doris Kimble. Appellant has no children other than Mikaela. His parents live about a

mile from his home. They have been involved with Mikaela throughout her life and would continue to help appellant if he obtained custody of her.

{¶9} Appellant had a drinking problem. Appellee claimed he drank a case of beer daily. Appellant denied drinking a case a day, but admitted to drinking 6-12, or possibly 15, beers a day. Appellant sought treatment in 1994, but relapsed. He again sought help in August, 2008. He testified that his last drink was August 9, 2008. He enrolled in a 90-day outpatient treatment program and attended AA meetings almost every day. He produced documentation at trial of numerous meetings he had attended, and his drug and alcohol screen before trial showed he was clean.

{¶10} Appellee testified that appellant did absolutely nothing with Mikaela until she became old enough to be his "gofer person." Tr.(III) 10. Once Mikaela was old enough to communicate, appellant would ask her to get him a beer, bring him toilet paper while he was going to the bathroom, and once asked her to help him take off his pants when he was too drunk to do it himself. She testified that Mikaela did not want to visit appellant and appellant sees the child as an object to serve him. She testified that Mikaela would "fall apart" if appellant were awarded custody.

{¶11} Appellee testified that appellant was violent and mean. She testified that he threatened to kill both her and Mikaela, although she never reported these threats to the police. She testified that every time he killed an animal, appellant said to her, "I should just put a bullet in your head too." Tr. (III) 36. Appellee presented pictures at trial which showed appellant cleaning his gun while she claimed he was drunk, the back of his pickup truck full of beer cans, and stacks of beer cans throughout appellant's home. She testified that he had four past DUI convictions.

{¶12} The court found that it was in the best interest of the child for appellee to be the residential parent and custodian. Appellant assigns a single error:

{¶13} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THAT IT WAS IN THE BEST INTEREST OF THE MINOR CHILD TO BE PLACED IN THE LEGAL CUSTODY OF THE APPELLEE AND NOT IN THE LEGAL CUSTODY OF THE APPELLANT."

{¶14} Appellant argues that the court did not consider appellee's past parenting history and did not place appropriate weight on her violation of the court's order during the pendency of the case when she took Mikaela to Florida after being ordered to keep her in the state. Appellant argues the court did not place appropriate weight on appellee's intent to relocate to Florida, given her past history with the other children, her lack of a concrete plan on how to provide for the child and her history of threatening to keep the child from appellant. Appellant argues the court focused too strongly on his alcohol problem rather than considering his positive relationship with his daughter, his ability to support her economically, his strong family support, and his progress in dealing with his alcohol problem.

{¶15} The standard of review in initial custody cases is whether the trial court abused its discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 416-17, 1997-Ohio-260. More than mere error of judgment, an abuse of discretion requires that the court's attitude was unreasonable, arbitrary or unconscionable*. Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Given the nature and impact of custody disputes, the juvenile court's discretion will be accorded paramount deference because the trial court is best suited to determine the credibility of testimony and integrity of evidence. *Gamble*

v. Gamble, Butler App. No. CA2006-10-265, 2008-Ohio-1015, ¶ 28. Specifically, "the knowledge a trial court gains through observing witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record." *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74. Therefore, giving the trial court due deference, a reviewing court will not reverse the findings of a trial court when the award of custody is supported by a substantial amount of credible and competent evidence. *Davis*, supra at 418.

{¶16} The juvenile court must exercise its jurisdiction in child custody matters in accordance with R.C. 3109.04. R.C. 3109.04(B)(1) governs initial custody awards, and provides: "When making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children."

{¶17} Because this action involved an original determination of custody of a child of an unmarried mother, R.C. 3109.042 is applicable. R.C. 3109.042 confers a default status on the mother as the residential parent until an order is issued by the trial court designating the residential parent and legal guardian. Such default status is not, in and of itself, a decree allocating parental rights and responsibilities to the mother. The trial court, in determining custody, must balance the competing interests of the natural parents with the child's best interests to determine if either parent would be a suitable custodian for the child. R.C. 3109.042 requires the court to treat each parent as standing upon equal footing. In other words, when a trial court makes a custody determination, pursuant to R.C. 3109.042, neither party is entitled to a strong

presumption in his or her favor. Under these circumstances, the trial court's custody determination need only be based on the best interests of the child according to R.C. 3109.04(B)(1).

{¶18} We cannot find that the court abused its discretion in naming appellee the residential parent. Appellant is correct that the evidence demonstrated a past history of unsuccessful parenting by appellee and concerns that appellee would not facilitate visitation with appellant after she moved to Florida. However, while appellant has taken positive steps to address his problem with alcohol, his sobriety was relatively recent as of the time of trial. Appellee testified that appellant was violent in the past and had threatened to kill both her and Mikaela. She also testified that appellant did absolutely nothing to help care for Mikaela and had no interest in her except to use her to fetch items he needed. The trial court is in a better position than this court to observe the demeanor of the witnesses and judge credibility. *Gamble*, supra. Based on the record, we do not find that the trial court's decision rose to an abuse of discretion.

{¶19} The assignment of error is overruled.

{¶20} The judgment of the Guernsey County Common Pleas Court is affirmed.

By: Edwards, J.

Farmer, P.J. and

Delaney, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/Patricia A. Delaney

JUDGES

JAE/r0717

[Cite as *In re Cihon*, 2009-Ohio-5805.]

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	
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MIKAELA CIHON	:	
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(A Minor Child)	:	JUDGMENT ENTRY
	:	
	:	
	:	
	:	CASE NO. 09 CA 00002

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

s/Julie A. Edwards

s/Sheila G. Farmer

s/Patricia A. Delaney

JUDGES