

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE:	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
A.I. AND T. I.	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
MINOR CHILD(REN)	:	
	:	
	:	Case No. 2009CA00269
	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from Court of Common Pleas, Family Court Division, Case Nos. 2007JCV01121 & 2009JCV00595
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	March 22, 2010
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APPEARANCES:

For Appellant

ALLYSON J. BLAKE
122 Central Plaza North
Suite 101
Canton, OH 44702

For Appellee

LISA A. LOUY
221 Third Street, SE
Canton, OH 44702

Farmer, J.

{¶1} On September 12, 2007, appellee, the Stark County Department of Job & Family Services, filed a complaint for temporary custody of A.I. born September 10, 2007, alleging the child to be dependent and/or neglected (Case No. 2007JCV01121). Mother of the child is Melody Lopez; father is appellant, Travis Ingram. By judgment entry filed November 28, 2007, the trial court found the child to be dependent and granted temporary custody of the child to appellee.

{¶2} On March 5, 2009, custody of A.I. was returned to Ms. Lopez under protective supervision.

{¶3} On May 11, 2009, appellee filed an ex parte order for custody of A.I. and a complaint for temporary custody of another child, T.I., born February 16, 2009, alleging the child to be dependent and/or neglected (Case No. 2009JCV00595). Father of T.I. is unknown. By judgment entry filed July 27, 2009, the trial court found T.I. to be neglected and granted temporary custody of the child to appellee.

{¶4} On August 13, 2009, appellee filed motions for permanent custody based upon the parents' failure to comply with the case plan. A hearing was held on October 21, 2009. By judgment entry filed October 26, 2009, the trial court granted permanent custody of the children to appellee. Findings of fact and conclusions of law were filed same date.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶6} "THE JUDGMENT OF THE TRIAL COURT THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY, EFFECTIVELY OVERRULING APPELLANTS (SIC) MOTION FOR A CHANGE OF LEGAL CUSTODY, WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I

{¶7} Appellant claims the trial court erred in finding the best interests of A.I. and T.I. was to award permanent custody to appellee when suitable relative placement was available. We disagree.

{¶8} Appellant does not dispute the fact that both he and Ms. Lopez failed in their case plans. Ms. Lopez actually stipulated to permanent custody of the children to appellee prior to the hearing. T. at 4-6. Appellant argues his request to have legal custody awarded to his brother and sister-in-law, Percy and Teleise Ingram, should have been granted.

{¶9} R.C. 2151.414(B) enables a court 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)(1) 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:

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

{¶11} "(b) 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;

{¶12} "(c) 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 or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

{¶13} "(d) 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;

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

{¶15} In its findings of fact and conclusions of law filed October 26, 2009, the trial court made extensive findings on the issue of relative placement:

{¶16} "The SCDJFS has investigated relative placement. Mr. Ingram has identified his brother and sister-in-law, Percy and Teleise Ingram, who would like custody of both children (although they acknowledge that T.I. is not legally related). SCDJFS has determined that placement with the Ingrams is unadvisable based upon home study findings that the Ingram's expenses are greater than their incomes, they

have insufficient space for bedding for two additional children and they have no automobile insurance.

{¶17} "Mr. and Mrs. Ingram reside in subsidized housing. They have four children of their own. Mr. Ingram provides childcare while Ms. Ingram attends Stark State College. The family is totally reliant upon government assistance to meet their daily needs. They receive food stamps, government housing, SSI for one of their children and student loans and grants. They acknowledge that they do not have automobile insurance and were unaware of a recent law change requiring booster seats for their children.

{¶18} "Ms. Ingram testified in this case and presents herself as an intelligent, sincere and charming young woman. She offers a loving and nurturing home for both of these children as a relative. The Ingrams are very close to A.I.'s father. The Court does not share the concerns of the SCDJJFS regarding the size of their home. They clearly have a plan for accommodating these additional children and would most likely be eventually eligible for larger public housing. However, the Court does find the Ingrams to be totally dependent at this time on government assistance and unable financially to take on the burden of two additional very young children. As such the Court finds this relative placement to be inappropriate.

{¶19} "Other relative placement investigated by the SCDJFS included the paternal grandmother, who was sought out by the on-going case worker. She was excluded as an option due to her own loss of foster care licensure. The case worker also called Mr. Ingram's sister at his behest. She did not return the call. The children's mother's sister requested placement of the children but was determined to be

inappropriate due to an outstanding Kentucky warrant. No other relative placement was identified." Findings of Fact in Re: Best Interests No. 5.

{¶20} As noted by the trial court, the goal of placement was to keep A.I. and T.I. together. T. at 41. There is a significant bond between the children despite their tender years. Id. Except for a three month period of time, A.I. and T.I. have been together since T.I.'s birth.

{¶21} The Ingrams are only related to A.I. and through no fault of their own, they have had no involvement or interaction with A.I. Ms. Ingram made an impassioned plea for custody, citing her own life experience and her belief that being raised by "family" was extremely important. T. at 95-96. No one can doubt or question her strong sincerity or strong beliefs.

{¶22} However, the cruel facts of life are that the Ingram's did not get recommended as placement for the children after the home study. T. at 62. The Ingram's expenditures were in excess of their income. T. at 61. They owned a vehicle, but did not have automobile insurance. Id. Both were unemployed, however, Ms. Ingram attended Stark State on a grant and had some loan money available, and Mr. Ingram was actively seeking employment. T. at 92, 96. They lived in Section 8 housing that was too small for the addition of two more children. T. at 60. They could not change their housing because they could not break their lease. T. at 94. The home study revealed the living conditions, although adequate, were already cramped.

{¶23} The children were bonded to each other and their foster parents, and the foster parents were interested in adopting both children. T. at 37, 41. The guardian ad

litem found the best interests of the children would be for the children to remain together. T. at 107-108.

{¶24} Upon review, in determining the best interests of the children, we find the trial court did not err in denying legal custody to the Ingrams.

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

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

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Patricia A. Delaney

JUDGES

SGF/sg 0315

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FIFTH APPELLATE DISTRICT

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A.I. AND T. I.	:	
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MINOR CHILD(REN)	:	JUDGMENT ENTRY
	:	
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	:	CASE NO. 2009CA00269

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

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Patricia A. Delaney

JUDGES