

[Cite as *In re A.B.*, 2010-Ohio-3569.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

A.B. AND K.B.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 10 AP 04 013

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court
of Common Pleas, Juvenile Division,
Case No. 08 JN 00684

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 2, 2010

APPEARANCES:

For Appellant - Father

SHARON BUCKLEY-MIRHAIDARI
152 N. Broadway Ave. Suite 101
New Philadelphia, Ohio 44663

For Mother

JOHN GARTREL, JR.
153 N. Broadway
New Philadelphia, Ohio 44663

For Appellee - Job and Family Services

DAVID HAVERFIELD
389 16th Street, S.W.
New Philadelphia, Ohio 44663

Guardian Ad Litem

KAREN DUMMERMUTH
Box 494
New Philadelphia, Ohio 44663

Hoffman, P.J.

{¶1} Appellant Danny Boyd (“Father”) appeals the March 12, 2010 Judgment Entry entered by the Tuscarawas County Court of Common Pleas, Juvenile Division, which terminated all of his parental rights with respect to his two minor children, and granted permanent custody of the children to Appellee Tuscarawas County Job and Family Services (“the Agency”).

STATEMENT OF THE FACTS AND CASE

{¶2} Father and Jessica Boyd (“Mother”) are the biological parents of A.B. (DOB 8/15/07) and K.B. (DOB 6/12/08).¹ On December 17, 2008, the Agency filed a Complaint, alleging A.B. and K.B. to be neglected and dependent children, after Mother attempted to commit suicide in their presence. The Agency also had concerns regarding housing, Father’s drug abuse, and the parents’ domestic violence issues. The children were placed in the temporary custody of kinship caregivers, Kristin and Thomas Perez, under the protective supervision of the Agency.² The trial court conducted an adjudicatory hearing on January 14, 2009. Upon agreement of the parties, the trial court permitted the Agency to amend the Complaint. Mother and Father entered admissions to the Amended Complaint. The matter immediately proceeded to disposition, and a comprehensive reunification plan was adopted for the parents.

¹ Mother is not a party to this appeal.

² Kristin and Thomas Perez are friends of the maternal grandmother. The couple divorced during the pendency of the matter, and Mrs. Perez asked the Agency to make alternative placement plans for the children. As a result, on June 30, 2009, the children were placed in the temporary custody of the Agency.

{¶3} Mother and Father participated in a significant portion of their required case plan services, however, the concerns which led to the Agency's initial involvement had not been alleviated. As such, on November 3, 2009, the Agency filed a Motion for Permanent Custody. The trial court conducted a hearing on the motion on March 4, 2010.

{¶4} William Buchwald, an outpatient counselor with Personal and Family Counseling, testified he began couple's counseling with Mother and Father in September, 2009. Buchwald stated he saw Parents on a weekly basis, and they were consistent in their attendance. Buchwald worked with Parents on improving their communications and stopping their arguments, however, he noted their communication was poor during the sessions. Mother often intentionally antagonized Father, insulting him, and causing him to become withdrawn. Buchwald provided Parents with the skills to better their relationship. Nonetheless, Father and Mother chose not to utilize those tools. Buchwald expressed concerns regarding Parents' numerous involvements with law enforcement officials. He also opined the arguing between Mother and Father would be detrimental to the children.

{¶5} Kristina Masten, an ongoing case manager with the Agency, testified she worked with the family from December, 2008, until the end of September, 2009. At the beginning of the case, Parents were advised not to reside together. Throughout her involvement, Parents visited with the children separately due to concerns over their fighting. Mother and Father were advised visits would remain separate until they made significant progress in couple's therapy and their counselor made the recommendation simultaneous visits would be appropriate. Masten detailed the requirements of Father's

case plan. Father's case plan required him to complete a drug and alcohol assessment and follow all recommendations regarding further treatment; submit to random drug testing; complete a psychological evaluation and follow all recommendations for treatment; participate and complete parent education classes; participate in couple's therapy; and obtain stable housing and employment.

{¶6} Father completed the drug and alcohol assessment and participated in an intensive outpatient program at Alcohol and Addiction as recommended. Masten noted Father was to begin the intensive outpatient program in March, or April, 2009, but he waited until June to commence the program. Father underwent random drug tests. His last positive drug screen was in May, 2009. Masten stated Father had addressed the drug issue to her satisfaction. Father completed a psychological evaluation. The evaluator recommended Father engage in cognitive behavioral or dialectical behavioral therapy. Father failed to attend several scheduled appointments for individual counseling. As Masten was preparing to transfer the case in September, 2009, Father reported he was seeing Mark Plotts for counseling.

{¶7} Father indicated he was working part-time for his father's asphalt company. Masten continued to have concerns about Father's having sufficient employment to support the family. At the beginning of the case plan, Mother and Father were advised not to reside together, but they did so nonetheless. In February, 2009, Father was charged with domestic violence. Father's psychiatrist recommended medication, but Father took it for only a short time. Masten stated neither Mother nor Father had taken full responsibility for why the children had been removed from their care, and each blames the other for the agency's involvement.

{¶8} Kathy Fisher, an ongoing case manager with the Agency, testified she assumed responsibility for the family in the beginning of October, 2009. Fisher found it difficult to set up monthly meetings with the parents as they did not return her telephone calls and were away from their home the times she conducted drop-ins visits. Parents continued to argue and fight; therefore, the Agency still would not permit them to visit the children together. Fisher conceded Father's visits with the children are very appropriate.

{¶9} Fisher also testified regarding the best interest of the children. The girls are placed together in a foster home, and have been in the home since June, 2009. Neither child has any special needs of which the Agency is aware. The foster parent has expressed an interest in adopting the children. Fisher believed a grant of permanent custody to the Agency was in the best interest of the children.

{¶10} Via Judgment Entry filed March 12, 2010, the trial court terminated Father's parental rights, and granted permanent custody of the children to the Agency.

{¶11} It is from this judgment entry Father appeals, raising as his sole assignment of error:

{¶12} "I. THE TRIAL COURT ERRED IN GRANTING JOB AND FAMILY SERVICES PERMANENT CUSTODY AS SAID DECISION WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AS REQUIRED BY O.R.C. 2151.414 AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

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

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{¶14} In his sole assignment of error, Father maintains the trial court erred in granting permanent custody of A.B. and K.B. to the Agency as such decision was not supported by clear and convincing evidence and was against the manifest weight of the evidence.

{¶15} 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.

{¶16} 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.

{¶17} 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.

{¶18} 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.

{¶19} 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.

{¶20} 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.

{¶21} Father contends the trial court's findings were not supported by the evidence as the Agency failed to prove the children could not be placed with Father. Father asserts he successfully and substantially completed all of his case plan requirements.

{¶22} We note Father did, in fact, comply with most portions of his case plan. However, Father continued to stay with Mother despite the fact the two argued and fought constantly, and were unable to communicate with one another. Father never learned to employ the communication and coping skills he was being taught in couple's counseling. Father's case plan required he undergo a psychological evaluation and follow all recommendations. The psychiatrist recommended Father take medication, which Father tried, but stopped taking because he did not like the way it made him feel. Father did not contact the psychiatrist for an alternative. Father only had one hour supervised visits with the children throughout the proceeding. There is no evidence in the record Father attempted to increase his visits or have the visits be unsupervised. Although Father and Mother repeatedly requested they be allowed to visit the children together, the testimony of William Buchwald, their couple's therapist, implicitly demonstrated the dynamics between the two would be detrimental to the children.

{¶23} Based upon the foregoing and the entire record in this matter, we find the trial court's granting permanent custody of A.B. and K.B. to the Agency was not against the manifest weight of the evidence.

{¶24} Father's sole assignment of error is overruled.

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

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

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

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

