

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

D.W., O.W., and N.W.  
  
Dependent Children

JUDGES:

Hon. Julie A. Edwards, P. J.  
Hon. John W. Wise, J.  
Hon. Patricia A. Delaney, J.

Case Nos. 10 CA 32, 33, and 34

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Juvenile Division, Case Nos. 2008  
AB 208, 209, and 210

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 3, 2010

APPEARANCES:

For Appellant Mother

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For the Children

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*Wise, J.*

{¶1} Appellant Cara Wilson appeals from a permanent custody decision in the Fairfield County Court of Common Pleas, Juvenile Division. Appellee is the Fairfield County Child Protective Services (“FCCPS”). The relevant facts leading to this appeal are as follows.

{¶2} Appellant is the mother of D.W., born in 1995, O.W., born in 1996, and N.W., born in 1997. FCCPS was first involved with appellant’s children in late 1999 and early 2000, when D.W., O.W., and N.W. were found to be dependent and placed in the temporary custody of the agency. That court case was terminated upon FCCPS’s motion in November, 2000.

{¶3} On July 16, 2008, FCCPS filed a complaint alleging dependency regarding D.W., O.W., and N.W. Appellant had sought FCCPS assistance in this instance and signed a voluntary agreement for the agency to take temporary custody. Appellant extended the voluntary agreement twice thereafter. See Trial Court’s Findings of Fact and Conclusions of Law at 1-2

{¶4} FCCPS dismissed the aforesaid dependency action on September 18, 2008, but immediately filed a similar complaint. The children entered shelter care temporary custody on the same day. Temporary custody with FCCPS has remained in place throughout the duration of the case. The agency’s concerns have centered on appellant’s drug and alcohol abuse, her depression issues, her lack of stable housing, and her inadequate supervision of these now-teenage children.

{¶15} On March 4, 2009, FCCPS filed a motion requesting that legal custody of D.W., O.W., and N.W. be granted to the children's paternal aunt and uncle. However, the agency withdrew this request on June 23, 2009.

{¶16} On July 16, 2009, FCCPS filed a motion for permanent custody to the agency. The motion proceeded to an evidentiary hearing on December 8, 2009 and March 16, 2010.

{¶17} On May 13, 2010, the trial court, via individual judgment entries, granted permanent custody of all three children to FCCPS.

{¶18} On June 4, 2010, appellant filed a notice of appeal. She herein raises the following two Assignments of Error:

{¶19} "I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTERESTS [OF] D.W., O.W., AND N.W. TO PERMANENTLY TERMINATE THE PARENTAL RIGHTS OF CARA WILSON AND PLACE D.W., O.W., AND N.W. IN THE PERMANENT CUSTODY OF FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES.

{¶110} "II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT D.W., O.W., AND N.W. COULD NOT BE PLACED WITH CARA WILSON WITHIN A REASONABLE TIME OR SHOULD NOT BE PLACED [WITH] CARA WILSON."

{¶111} We will address the assigned errors in reverse order.

II.

{¶12} In her Second Assignment of Error, appellant challenges the trial court's conclusion that D.W., O.W., and N.W. could not be placed with her within a reasonable time or should not be placed with her.<sup>1</sup>

{¶13} R.C. 2151.414(B)(1) reads as follows: "Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

{¶14} "(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 time or should not be placed with the child's parents.

{¶15} "(b) The child is abandoned.

{¶16} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶17} "(d) 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 \* \* \*."

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<sup>1</sup> The children's father did not appear for either evidentiary hearing, despite proper service, and has not participated in the agency's case at all.

{¶18} In determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents (see R.C. 2151.414(B)(1)(a), supra), a trial court is to consider the existence of one or more factors under R.C. 2151.414(E), including whether or not “[f]ollowing 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.” See R.C. 2151.414(E)(1).

{¶19} As an initial matter, we note the trial court in the case sub judice relied on R.C. 2151.414(B)(1)(a), supra, even though it simultaneously made a finding, in implicit reference to R.C. 2151.414(B)(1)(d), that the children had “been in the temporary custody of Fairfield County Child Protective Services for twelve (12) or more months of a consecutive twenty-two (22) month period.” Findings of Fact and Conclusions of Law at 5. There is no apparent dispute that at the time of the filing of the present permanent custody on July 16, 2009, D.W., O.W., and N.W. had been in agency custody for exactly twelve months, which period included slightly more than two months under the prior dependency case, which was dismissed and re-filed by FCCPS on September 18, 2008. See Findings of Fact and Conclusions of Law at 1-2. Under these circumstances,

even though the trial court thoroughly reviewed the evidence pursuant to R.C. 2151.414(B)(1)(a) and both sides have cogently argued accordingly in the briefs, we are compelled, based on R.C. 2151.414(B)(1)(d), to directly proceed to an analysis of the best interest issue. See, e.g., *In re Walton/Fortson Children*, Stark App.No. 2007CA00200, 2007-Ohio-5819, ¶ 14; *In re T.S.*, Franklin App.Nos. 07AP-624, 07AP-625, 2007-Ohio-6645, ¶8-¶9.

{¶20} Appellant's challenge to the court's finding that the children could not be placed with her within a reasonable time or should not be placed with her is thus found to be moot.

{¶21} Appellant's Second Assignment of Error is overruled.

I.

{¶22} In her First Assignment of Error, appellant contends the trial court erred and abused its discretion in finding the children's best interest would be served by granting permanent custody to the agency. We disagree.

{¶23} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of 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. 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, 376 N.E.2d 578. Furthermore, it is well-established that the trial court is in the best position to determine the credibility of witnesses. See, e.g., *In re Brown*, Summit App.No. 21004,

2002-Ohio-3405, ¶ 9, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶24} It is well-established that “[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.” *In re Mauzy Children* (Nov. 13, 2000), Stark App.No. 2000CA00244, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316, 642 N.E.2d 424.

{¶25} In determining the best interest of a child for purposes of disposition, the trial court is required to consider the factors contained in R.C. 2151.414(D). These factors are as follows:

{¶26} “(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster care givers and out-of-home providers, and any other person who may significantly affect the child;

{¶27} “(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;

{¶28} “(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 \* \* \*;

{¶29} “(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;

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

**{¶31}** The initial concerns in the 2008 complaint included, inter alia, appellant’s substance abuse problem (including marijuana and methamphetamine use) and its unwholesome consequences for the children. As noted in our recitation of facts, this is not the first time that FCCPS has been required to obtain temporary custody of these children, and the record provides little assurance that appellant can provide a secure ongoing placement. See R.C. 2151.414(D)(3) and (D)(4), supra. Appellant relapsed and tested positive for marijuana use in February 2010. In January 2009, appellant was evicted from her apartment, but she has been living with her boyfriend since March 2009. She testified that she and her boyfriend had signed a lease for a three-bedroom apartment in February 2010, with the aid of Community Action funds, although she did not provide written proof of said lease. Appellant conceded that she was reliant on her boyfriend’s income for rent. As of the time of the evidentiary hearings in this case, appellant had been unemployed since the end of 2008, and she testified that she did not “think it would be fair to an employer to try to have them work with my emotions at this time.” Tr. at 39. She is currently appealing a denial of social security disability, based on a claim of major depression, anxiety, and high blood pressure. Tr. at 63.

**{¶32}** FCCPS does not dispute that a strong bond continues between appellant and the children, and that the children have expressed a desire to return. See R.C. 2151.414(D)(2), supra. Appellant emphasizes that she has never withheld food or medical treatment from the children. However, the guardian ad litem has recommended that the court approve permanent custody, and testimony based on supervised visitation



was presented that appellant functions more as a “friend” to her children than as a parent. Indeed, D.W., the oldest, appears to be filling a parenting role with his siblings. As FCCPS notes in its brief, D.W., O.W., and N.W. are in need of a permanent home setting with parental rules and boundaries for proper maturing and socialization and for consistent monitoring to prevent their own drug and alcohol use.

{¶33} Upon review of the record and the findings of fact and conclusions of law therein, we conclude the trial court's grant of permanent custody of D.W., O.W., and N.W. to FCCPS was made in the consideration of the children's best interests and did not constitute an error or an abuse of discretion.

{¶34} Appellant's First Assignment of Error is overruled.

{¶35} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Juvenile Division, Fairfield County, Ohio, is hereby affirmed.

By: Wise, J.

Edwards, P. J., and

Delaney, J., concur.

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JUDGES

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

D.W., O.W., AND N.W.

Dependent Children

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JUDGMENT ENTRY

Case Nos. 10 CA 32, 33, and 34

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

Costs assessed to appellant.

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JUDGES