

[Cite as *In re N.K.*, 2016-Ohio-4629.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: N.K.

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2015CA00231

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Juvenile Division Case No.
2014JCV00148

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 13, 2016

APPEARANCES:

For Appellant - Mother

For Father

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Hoffman, J.

{¶1} Appellant Roceeda Kelly (“Mother”) appeals the November 23, 2015 Judgment Entry entered by the Stark County Court of Common Pleas, Juvenile Division, which approved and adopted the Magistrate’s Decision recommending legal custody of her minor daughter, N.K., be granted to L.C. Adams, Sr., N.K.’s paternal grandfather (“Paternal Grandfather”). Appellee is Stark County Job and Family Services (“SCJFS”).

STATEMENT OF THE CASE AND FACTS

{¶2} Mother is the biological mother of N.K. (DOB 7/9/2012). L.C. Adams, Jr. (“Father”) is N.K.’s biological father. On February 21, 2014, SCJFS filed a complaint, alleging N.K. was dependent and/or neglected. The complaint was based upon Mother’s severe mental health issues and multiple suicide attempts. Following an emergency shelter care hearing, the trial court awarded emergency temporary custody of the child to SCJFS and reaffirmed pre-adjudicatory orders requiring Mother to complete a parenting evaluation and follow all recommendations.

{¶3} The trial court conducted an adjudicatory hearing on May 5, 2014. The trial court found N.K. to be dependent, and placed her in the temporary custody of SCJFS. The trial court conducted a semi-annual review on August 13, 2014, at which time it approved and adopted the case plan and maintained the status quo. The trial court conducted an annual review hearing on January 13, 2015, and again approved and adopted the case plan and maintained the status quo. The trial court also extended temporary custody for an additional six months. On June 1, 2015, SCJFS filed a motion to extend temporary custody. The trial court scheduled a hearing on the motion for September 1, 2015.

{¶4} Father filed a motion to change legal custody to Paternal Grandfather on July 17, 2015. Paternal Grandfather filed a motion to intervene on the same day, which the trial court granted on July 23, 2015. On July 24, 2015, Mother filed a motion requesting the trial court conduct a hearing on Paternal Grandfather's motion to intervene. The magistrate conducted a hearing on SCJFS's motion to extend temporary custody as well as Father's motion to change legal custody on September 1, 2015.

{¶5} At the hearing, Dr. Aimee Thomas, a licensed psychologist, testified she conducted two parenting evaluations of Mother. Dr. Thomas stated she found Mother to be defensive. In addition, Mother omitted pertinent and critical information during the interviews. Dr. Thomas found Mother's mental health concerning. Mother had attempted suicide on multiple occasions. Mother acknowledged she experienced visual and auditory hallucinations when she is depressed. Mother was hesitant to discuss her depressive symptoms and expressed concerns her disclosures would be held against her. Mother reported to Dr. Thomas she had been struggling with depression since childhood.

{¶6} Based upon the information Dr. Thomas received from Mother during the interviews, Dr. Thomas had little confidence Mother would maintain long term medication compliance. Dr. Thomas indicated Mother's mental health and failure to follow treatment put any child in her care at grave risk. Dr. Thomas diagnosed Mother with major depressive disorder with psychosis. Dr. Thomas explained, during a depressive episode, Mother would be unable to properly supervise her children. Dr. Thomas noted Mother did not fully accept or acknowledge the severity of her problems. Dr. Thomas found Mother's support system to be questionable. Mother's mother told Mother that depression

was a “figment or concept of white people” and advised Mother to flush her antidepressants down the toilet. In addition, Mother’s mother dissuaded Mother from using birth control. Further, Mother had a history of violent and dysfunctional romantic relationships. Although Dr. Thomas indicated N.K. was bonded with Mother and should have a relationship with Mother, Mother could not manage the responsibilities of parenthood on a full time basis, especially given she had two other toddlers in her home.

{¶7} Amy Craig, the ongoing caseworker for N.K., testified Mother had complied with numerous aspects of her case plan and was making progress. However, Craig requested the trial court grant an extension of temporary custody in order for Mother to complete home based parenting. Craig acknowledged the risks at the beginning of the case had definitely been reduced, but noted Mother still needed more time to continue to address those risks.

{¶8} Paternal Grandfather testified N.K. had been in his care for approximately 20 months, and the two have a good relationship. Paternal Grandfather takes N.K. to all of her medical appointments. He has the familial and financial support to care for N.K. Although Paternal Grandfather indicated he had concerns about Mother’s mental health and worried about N.K., he testified he would permit Mother to visit N.K. and N.K.’s siblings. The guardian ad litem recommended legal custody of N.K. be granted to Paternal Grandfather.

{¶9} Via Decision filed September 3, 2015, the magistrate terminated SCJFS’s involvement, granted Paternal Grandfather’s motion to intervene, and named Paternal Grandfather legal custodian of N.K. Mother filed objections to the magistrate’s decision. The trial court heard arguments on Mother’s objections at a hearing on November 16,

2015. Via Judgment Entry filed November 23, 2015, the trial court approved and adopted the magistrate's decision except for the magistrate's decision regarding visitation.

{¶10} It is from this judgment entry Mother appeals, raising as error:

{¶11} "I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY GRANTING LEGAL CUSTODY OF [N.K.] TO THIRD PARTIES AS SUCH DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE THAT SUCH DECISION WAS IN [N.K.'S] BEST INTEREST."

{¶12} This case comes to us on the expedited calendar and shall be considered in compliance with App. R. 11.2(C).

I

{¶13} In Ohio, the statutorily permissible dispositional alternatives in a dependency, neglect, or abuse case are enumerated in R.C. 2151.353(A). See, e.g., *In re S. Y.*, 5th Dist. Tuscarawas No.2011AP04 0018, 2011–Ohio–4621, ¶ 31. In particular, R.C. 2151.353(A)(3) provides in pertinent part: "If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition: * * * Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. * * *."

{¶14} A trial court "must have wide latitude in considering all the evidence" and a custody decision will not be reversed absent an abuse of discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260. 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 finder of fact could base its judgment. *Cross Truck Equip. Co. v. The Joseph A. Jeffries Co.*, 5th Dist. No. CA5758, 1982 WL 2911 (Feb. 10, 1982). 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.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶15} Unlike a permanent custody proceeding where a juvenile court's standard of review is by clear and convincing evidence, the standard of review in legal custody proceedings is a preponderance of the evidence. *In re S.D.*, 5th Dist. Stark Nos.2013CA0081 & 2013CA0082, 2013–Ohio–5752, ¶ 32 (Citations omitted).

{¶16} In this type of dispositional hearing, the focus is on the best interest of the child. *In re C.R.*, 108 Ohio St.3d 369, 2006–Ohio–1191, 843 N.E.2d 1188; *In re P.S.*, 5th Dist. No.2012CA00007, 2012–Ohio–3431. Despite the differences between a disposition of permanent custody and legal custody, some Ohio courts have recognized “the statutory best interest test designed for the permanent custody situation may provide some ‘guidance’ for trial courts making legal custody decisions.” *In re A.F.*, 9th Dist. No. 24317, 2009–Ohio–333 at ¶ 7, citing *In re T.A.*, 9th Dist. No. 22954, 2006–Ohio–4468 at ¶ 17. The test would thus encompass a consideration of factors including, but not limited to: (1) the child's interaction with his or her parents, siblings, relatives, foster caregivers, and others, (2) the child's wishes, which may be expressed by the guardian ad litem, (3) the child's custodial history, and (4) the need for a legally secure permanent placement. See R.C. 2151.414(D)(1).

{¶17} As set forth in our statement of the facts and case, Mother's mental health issues remained a major concern. Dr. Thomas had little confidence Mother would maintain long term medication compliance. Dr. Thomas indicated Mother's mental health and failure to follow treatment put any child in her care at grave risk. Dr. Thomas diagnosed Mother with major depressive disorder with psychosis. During a depressive episode, Mother would be unable to properly supervise her children. Mother did not fully accept or acknowledge the severity of her problems. Dr. Thomas found Mother's support system to be questionable. Mother's mother told Mother that depression was a "figment or concept of white people" and advised Mother to flush her antidepressants down the toilet. In addition, Mother's mother dissuaded Mother from using birth control. Further, Mother had a history of violent and dysfunctional romantic relationships. Although Dr. Thomas indicated N.K. was bonded with Mother and should have a relationship with Mother, Mother could not manage the responsibilities of parenthood on a full time basis especially given she had two other toddlers.

{¶18} N.K. had been with Paternal Grandfather for approximately 20 months. The two had a good relationship. Paternal Grandfather takes N.K. to all of her medical appointments. He has the familial and financial support to care for N.K. Paternal Grandfather testified he would permit Mother to visit N.K. and N.K.'s siblings. The guardian ad litem recommended legal custody of N.K. be granted to Paternal Grandfather.

{¶19} We find the trial court's decision is supported by a preponderance of the evidence, and a change of legal custody was in the best interest of N.K.

{¶20} Mother's sole assignment of error is overruled.

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

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur