[Cite as *In re Z.N.*, 2010-Ohio-2910.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: Z.N.	:	
		No. 10AP-85
(T.C.,	:	(C.P.C. No. 07JU-12-18316)
Appellant).	:	(ACCELERATED CALENDAR)

D E C I S I O N

Rendered on June 24, 2010

Heather L. Keck, for appellant.

Roger Warner, for appellees D.T. and T.T.

Robert J. McClaren, for appellee Franklin County Children Services.

Alita C. Rucker, for CASA of Franklin County.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

FRENCH, J.

{¶1} Appellant, T.C., appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which granted permanent custody of her niece ("Z.N.") to Franklin County Children Services ("FCCS" or "appellee").

{¶2} Z.N.'s parents voluntarily sought FCCS's assistance with Z.N. shortly after her birth in August 2007. An award of temporary custody was initially granted in December 2007. Z.N.'s parents had a history of mental illness, they were not taking their prescribed medications, there was domestic violence between them, and Z.N.'s father was reportedly abusing illegal substances. Although Z.N.'s parents had some initial involvement in the case plan, neither is involved in this appeal.

{¶3} Appellant, the sister of Z.N.'s father, filed for temporary custody in January 2008. The trial court denied the motion as moot.

{¶4} Appellant filed for custody again in October 2008, February 2009, and May 2009. FCCS filed for permanent custody in February 2009. Z.N.'s foster parents, who were granted party status below and appear as appellees here, filed for custody in March 2009.

{¶5} A trial was held over two days in December 2009. The court granted FCCS's motion for permanent custody.

{¶6} Appellant filed a timely appeal, and she raises a single assignment of error:

> THE TRIAL COURT'S DETERMINATION GRANTING PERMANENT CUSTODY OF THE CHILD TO CHILDREN SERVICES AND DENYING [APPELLANT'S] MOTION FOR LEGAL CUSTODY WAS CONTRARY TO LAW, WAS NOT BASED ON CLEAR AND CONVINCING EVIDENCE, AND WAS NOT IN THE BEST INTEREST OF THE CHILD.

{¶7} In considering the trial court's decision to grant permanent custody to FCCS, this court must determine from the record whether the trial court had sufficient evidence before it. " '[E]very reasonable presumption must be made in favor of the

judgment and the findings of facts [of the trial court].' " *In re Brooks*, 10th Dist. No. 04AP-164, 2004-Ohio-3887, ¶59, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. Further, " 'if the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the [juvenile] court's verdict and judgment.' " *In re Brooks* at ¶59. In short, " '[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 Hogle* (June 27, 2000), 10th Dist. No. 99AP-944, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316.

{¶8} It is also "well recognized that the right to raise a child is an 'essential' and 'basic' civil right." *In re Hayes* (1997), 79 Ohio St.3d 46, 48, citing *In re Murray* (1990), 52 Ohio St.3d 155, 157. "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' " *In re Hayes* at 48, quoting *In re Smith* (1991), 77 Ohio App.3d 1, 16. Accordingly, parents must receive every procedural and substantive protection the law permits. Id. "Because an award of permanent custody is the most drastic disposition available under the law, it is an alternative of last resort and is only justified when it is necessary for the welfare of the children." *In re Swisher*, 10th Dist. No. 02AP-1408, 2003-Ohio-5446, ¶26, citing *In re Cunningham* (1979), 59 Ohio St.2d 100, 105.

{¶9} Pursuant to R.C. 2151.414(B)(1), the court, after a hearing, may grant permanent custody of a child to FCCS if the court determines, 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 and that one of following applies: (a) the child cannot or should not be placed with the parents; (b) the child is abandoned; (c) the child is orphaned; or (d) the child has been in temporary custody of one or more public or private children services agencies for 12 or more months of a consecutive 22-month period.

{¶10} Here, Z.N. had been in temporary FCCS custody for 12 or more months of a consecutive 22-month period. Therefore, the issue before the court was whether permanent FCCS placement was in her best interest. R.C. 2151.414(D) requires that, in determining the best interest of a child, the court must consider all relevant factors, including, but not limited to:

> (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;
>
> (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;
>
> (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;
>
> (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;
>
> (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶11} FCCS has the burden to prove "best interest" by clear and convincing evidence.

> * * * Clear and convincing evidence is the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes (1986), 25 Ohio St.3d 101, 104. Here, the court determined that FCCS had met its burden to show that it is in the best interest of Z.N. to grant permanent custody to FCCS.

{¶12} In arguing that the trial court's decision is against the manifest weight of the evidence, appellant argues, first, that there is no evidence to support the court's determination that there was "[n]o bond or minimal from acquaintance only" between Z.N. and appellant. We disagree.

{¶13} First, we disagree with appellant's characterization of the court's finding. In its opinion, the trial court acknowledged appellant's commitment to visitation with Z.N., stating that appellant "rarely missed a visit." The court also acknowledged appellant's willingness to care for the child. The court said that Z.N. "has become acquainted with [appellant] with some miniscule bond." More generally, when

describing Z.N.'s bond with "Relatives," the court found: "No bond or minimal from acquaintance only."

{¶14} The record supports the court's findings. Caseworker Travis Moriarity testified that the visits between Z.N. and appellant were "going very well," and there were "no concerns raised during those visitations." (Dec. 15, 2009 Tr. 52.) When asked specifically whether there is a bond between Z.N. and appellant, Moriarity stated: "There is a small bond. There's a little - - - some bonding, yes." (Dec. 15, 2009 Tr. 54.) When asked why the bond is small, Moriarity responded:

> There are times where [Z.N.] still does not seem to be comfortable with [appellant,] from my last observation. There are times where she still needs to - - - feels like she needs to warm up to the environment, to the individuals * * * involved in the visitation; however, that has improved since [appellant] has had visitation with her."

(Dec. 15, 2009 Tr. 54-55.)

{¶15} During a dialogue concerning Z.N.'s interaction and bonding with appellant, Moriarity was also asked whether the bonding between them "is not necessarily a parental or aunt bonding, but just a bonding that may occur with any child that sees somebody on such a short period of time?" (Dec. 15, 2009 Tr. 112-13.) Moriarity answered: "That is possible, yes." (Dec. 15, 2009 Tr. 113.)

{¶16} To be sure, appellant presented her own testimony about her bond with Z.N. and her care of the child. Nevertheless, the trial court was free to reach its own findings, and competent, credible evidence supports the court's finding that Z.N. has a "miniscule bond" with appellant.

{¶17} Next, appellant contends that the trial court failed to consider whether a legally secure placement could be achieved without a grant of permanent custody to FCCS. Again, we disagree.

{¶18} The trial court gave substantial attention to potential placement with appellant—the only other potential placement besides Z.N.'s parents and the foster parents—but found that appellant had failed her home study. Specifically, the court found that her home study "was denied for failure to make full disclosure of requested information, the child's father opposing her having custody, her criminal record (nearly 10 years old), some domestic conflict with the child's father, her prior involvement with [FCCS] with her child, and her son's criminal law or delinquency issues." These findings are consistent with Moriarity's testimony at trial. See Dec. 15, 2009 Tr. 43-52. In her brief, appellant does not address these concerns or discrepancies.

{¶19} Appellant also does not address the numerous other factors supporting the trial court's judgment. In particular, the court found that Z.N.'s parents had failed to meet the requirements of the case plan. Z.N.'s mother had had no contact with her for more than two years, and Z.N.'s father had not visited for three months prior to trial. They had not established housing or employment. Z.N. had no bond with her mother and little bond with her father.

{¶20} In contrast, the court noted the tremendous bond Z.N. has with her foster parents, with whom she had lived for more than two years. The court found that Z.N. "has clearly attached, imprinted and been incorporated into the home and life of the foster parents." The foster parents are potential adoptive parents for Z.N. As the trial

court found, "the child's best interest require[s] preserving the only home and placement known by the child."

{¶21} For all these reasons, we reject appellant's contention that the weight of the evidence does not support the trial court's judgment. Accordingly, we overrule her assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

BROWN and SADLER, JJ., concur.