

IN THE SUPREME COURT OF OHIO

IN RE: T.B., et al.

On Appeal from the
Lucas County Court of
Appeals, Sixth Appellate
District
Case Number 15-0140
Ct. App. Number L-14-1122

MEMORANDUM IN OPPOSITION TO JURISDICTION
OF APPELLEE LUCAS COUNTY CHILDREN SERVICES

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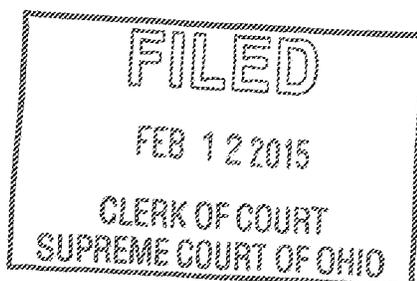
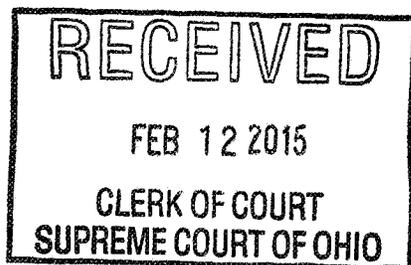


TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3
STATEMENT OF THE CASE.....4
STATEMENT OF FACTS..... 5-9
ARGUMENT..... 9-15

Proposition of Law Number 1.....9

WHEN AN APPELLANT EXPOSES THEIR REFUSAL TO PARTICIPATE IN COURT ORDERED CASE PLAN SERVICES, THEY ARE NOT ENTITLED TO A DISCRETIONARY APPEAL BECAUSE APPELLANT'S REFUSAL DOES NOT INVOLVE A MATTER OF PUBLIC INTEREST NOR GREAT GENERAL INTEREST NOR SUBSTANTIAL CONSTITUTIONAL QUESTION.

Proposition of Law Number 2.....14

APPELLANT IS NOT DENIED HER DUE PROCESS RIGHTS WHEN SHE HAD ADEQUATE NOTICE OF THE PERMAENT CUSTODY HEARING, WAS PRESENT AT THE PERMANENT CUSTODY HEARING, AND WAS REPRESENTED BY COUNSEL, THUS IT DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION.

Proposition of Law Number 3.....14

APPELLANT IS NOT ENTITLED TO A DISCRETIONARY APPEAL WHEN THE PERMANENT CUSTODY STATUTE HAS ALREADY BEEN HELD TO BE CONSTITUTIONAL

CONCLUSION.....15

CERTIFICATE OF SERVICE..... 16

TABLE OF AUTHORITIES

CASES

Williamson Appellee v. Rubich, 171 Ohio St. 253; 168 N.E. 2d 876 (1960).....9

State ex rel Pomery v. Webber 20 Ohio St. 2d 84; 206 N.E. 2d 204 (1965).....10

In re T.B., et al., (December 19, 2014), 6th Dist. No. L-14-1122.....11, 12

In re Morris, 2006 Ohio 323114

In re S.R., 2006 Ohio App. Lexis 4921.....15

STATUTES

ORC 2151.414(E).....10

ORC 2151.414(E)(1).....10, 15

ORC 2151.414(E)(15).....12, 13, 15

ORC 2151.414(E)(4).....15

STATEMENT OF THE CASE

Appellant, L.C. filed an appeal of the December 19, 2014, judgment of the Sixth District Court of Appeals affirming the May 23, 2014, judgment of the Lucas County Court of Common Pleas, Juvenile Division, awarding permanent custody of her minor children to Lucas County Children Services. T.B. is the father of the children and has not appealed either judgment.

On March 29, 2013, a Complaint was filed alleging that T.B., T.B., T.B., T.B., T.B., and T.B. were Dependent, Neglected and Abused children. On that same date, a shelter care hearing was held, and the children were placed in the temporary custody of Lucas County Children Services. ("L.C.C.S.")

On May 9, 2013, an adjudication hearing was held. The children were adjudicated Dependent, Neglected and Abused children. Disposition was held on June 18, 2013 and temporary custody was given to L.C.C.S.

On August 14, 2013, L.C.C.S. filed its motion for Permanent Custody of the children. The dispositional hearing occurred on November 25, 2013, February 27, 2014, May 5, 2014, and May 9, 2014. Mother, L.C. appeared with her attorney. Father, T.B. appeared the first day of trial and waived his right to a hearing. The children were appointed their own separate attorneys, who were present. The Children's Guardian Ad Litem was present. Following the disposition, the Trial Court granted L.C.C.S.'s Motion for Permanent Custody. On December 19, 2014, the Sixth District Court of Appeals affirmed the Trial Court's judgment.

STATEMENT OF FACTS

Sasha Dacres was the first witness to testify for LCCS. Ms. Dacres was the ongoing caseworker for the family. (Transcript Vol. I. page 14, "hereinafter T.P. ___") The family has a history with the agency in 2009, when T.B. was burned with a hairdryer and protective supervision was awarded to L.C.C.S. (T. Vol I. P. 15.) In 2007, there was a concern for supervision when T.B. was taken to the hospital for a bump on the head which occurred when the children were left in the home alone. (T. Vol. I P. 17) Ms. Dacres indicated that the children came to the attention of the agency this current time due to issues of sexual abuse and issues of neglect of the children. (T. Vol. I. P. 17-18) The children were adjudicated neglected and abused. (T. Vol. I. P. 18)

Ms. Dacres told the Court that a case plan was developed for the family. (T. Vol I. P. 19) The services for L.C. were a parenting program, non-offending parenting, a mental health assessment, psychological evaluation, domestic violence services and to obtain stable housing. (Id.)

Ms. Dacres stated that L.C. was supposed to participate in counseling at Harbor. (T. Vol I. P. 26) That counseling was not conducive to the case plan services that were outlined for her in regards to her reunifying with the children. (Id.)

Ms. Dacres has asked L.C. if she believes that the children have been abused. (T. Vol. I. P. 28) L.C. has indicated that she does not believe that they have been abused. (Id.)

Ms. Dacres next outlined the case plan services for the father in the case plan. (T. Vol. I. P. 28) The father is currently incarcerated for felony rape of the children. (T. Vol. I. P. 29) He felt L.C. was overwhelmed with the children. (T. Vol. I. P. 30-31)

Ms. Dacres has observed visits between L.C. and the children. (T. Vol. I. P. 31) She rarely sees mom engage with the children. (T. Vol. I. P. 32) L.C. also asked to shorten the visits due to the bus schedule. (Id.)

Holly Mangus was the second witness to testify on behalf of L.C.C.S. (T. Vol. I. P. 131) Ms. Mangus is a supervisor for L.C.C.S. and supervises the B. case. (Id.)

Ms. Mangus testified that she had the opportunity to talk to L.C. and L.C. did not believe that her children were sexually abused. (T. Vol I. P. 133) L.C. was told about the abuse and failed to protect the children. (Id.)

Ms. Mangus indicated that L.C.'s cooperation has been poor. (T. Vol. I. P. 135) L.C.'s Harbor counseling was not what L.C.C.S. was looking for. (T. Vol. I. P. 136) It was not conducive to reunification. (Id.) Ms. Mangus stated that when she brought this to L.C.'s attention in May, the consents were revoked and L.C.C.S. did not get new releases of information signed until November. (Id.) Ms. Mangus made many attempts to get the releases signed by L.C. (Id.)

Ms. Mangus told the Court that Harbor felt resistance from L.C. in getting the psychological evaluation done. (T. Vol. I P. 138) Ms. Mangus offered to come to Harbor and meet with the therapist and L.C. (Id.) L.C. was not interested in having that meeting. (Id.)

Ms. Mangus was able to observe visits between L.C. and the children. (T. Vol. I P 139) L.C. continues to parent from the couch. (Id.) She does not interact with the children. (Id.)

Ms. Mangus told the Court that L.C. did not wish to cooperate in the criminal investigation involving the rape of the children. (T. Vol. I. P. 145)

Dr. Randall Schlievert was the third witness to testify on behalf of L.C.C.S. (T. Vol II. P. 150) Dr. Schlievert is employed through Mercy Health System as the Director of their Child Abuse Program and the Regional Vice President for Academic Affairs and Research. (Id.) Dr. Schlievert was qualified by the Court as an expert in the area of medical child abuse. (T. Vol II. P. 151) He evaluated some of the B children for concerns for sexual abuse and previously evaluated T.B. for some burns that she had a couple of years ago. (T. Vol II. P 152) In this case, Dr. Schlievert diagnosed several of the children as sexually abused as well as physically abused because of their injuries. (T. Vol II. P. 153)

Dr. Schlievert stated that the kids disclosed that their mother, L.C. would call the father to whip them. (T. Vol. II P. 154) She also told the kids that she didn't believe them regarding the sexual abuse. (Id.) Dr. Schlievert told the Court he recommended that the children not return home because they would be at risk. (T. Vol. II. P. 154-155)

Robin Fuller was the last witness to testify on behalf of L.C.C.S. (T. Vol. II. P. 165) Ms. Fuller is the children's Guardian Ad Litem since February of 2013. (Id.)

Ms. Fuller wrote a report for the Court that she based on her own independent investigation. (T. Vol. II. P. 166) She recommends permanent custody of the children to L.C.C.S. (Id.) Ms. Fuller does not believe L.C. completed her services. (T. Vol. II. P. 167) L.C. did not complete a psychological evaluation. (Id.) She had time in between trial dates to complete the evaluation but still didn't do it. (Id.)

Ms. Fuller has observed visits between L.C. and the children. (T. Vol. II. P. 168) They are very chaotic. (Id.) L.C. looks frustrated and overwhelmed. (Id.) She doesn't watch what the children are doing. (Id.) She just kind of sits there. (Id.) Ms. Fuller has

concerns that L.C. requested a shorter visit time. (T. Vol. II. P 169) Ms. Fuller believed L.C. requested the shorter time because school was her priority. (Id.)

Ms. Fuller told the Court that during the life of the case L.C. was not forthcoming about where she was living. (T. Vol. II. P. 200) The first time Ms. Fuller knew that she was living at her sister's house was when L.C. testified during the trial. (Id.)

After admitting States exhibits 1, 3, 4, 5, 8, 10, and 11 L.C.C.S. rested.

Wendy Nathan was the first witness to testify on behalf of L.C. (T. Vol. I. P 191) Ms. Nathan works at Mercy College and is the Director of Counseling. (Id.) She knows L.C. because L.C. is a student at Mercy College. (T. Vol I. P. 192) L.C. came to Ms. Nathan for counseling six months ago. (Id.) Ms. Nathan feels L.C. still has more work to do. (T. Vol. I. P. 198)

L.C. was the second witness to testify on her own behalf. (T. Vol. II P. 8) She admitted she pled guilty to child endangering for an incident involving injury to one of the children. She admitted she was evicted from her housing in January because of housekeeping still has not found another place to live. She admitted she had a mental health assessment and was diagnosed with depression disorder and attachment disorder and counseling was set up but her attendance has been sporadic. She admitted she wasn't honest at the assessment and told them that her sister had kidnapped the children and put words in their mouths. She admitted her sister told her about the sexual abuse in December 2012 but she didn't believe her. She admitted she talked to the children and the father about it but didn't do anything about it. (T.P. Vol. II 8-126)

L.C. then admitted Exhibits B, C, D and E, over L.C.C.'s objection to exhibit D, and rested.

At the conclusion of closing arguments by counsel, the Court found that LCCS did provide clear and convincing evidence to justify an award of permanent custody of T.B., T.B., T.B., T.B., T.B., and T.B. for adoptive placement and planning. (T. Vol. II P 226-233)

ARGUMENT

Proposition of Law Number 1:

WHEN AN APPELLANT EXPOSES THEIR REFUSAL TO PARTICIPATE IN COURT ORDERED CASE PLAN SERVICES, THEY ARE NOT ENTITLED TO A DISCRETIONARY APPEAL BECAUSE APPELLANT'S REFUSAL DOES NOT INVOLVE A MATTER OF PUBLIC INTEREST NOR GREAT GENERAL INTEREST NOR A SUBSTANTIAL CONSTITUTIONAL QUESTION.

An appellant is not entitled to a discretionary appeal before this court when the case involves neither a matter of public interest nor great general interest nor a substantial constitutional question. Contrary to the claims of the Appellant, this case does not involve a question of public or great general interest or a constitutional question. Rather, one of Appellant's arguments questions whether the trial court and the Sixth Appellate District were in error when they each found that the statutory requirements of an award of permanent custody had been met regarding the above captioned children.

This court has held that the sole issue for determination at the initial stage of a discretionary appeal is whether the cause presents a question or questions of public or great general interest as distinguished from questions of interest primarily to the parties. Williamson, Appellee v. Rubich, 171 Ohio St. 253; 168 N.E. 2d 876 (1960) In this case, a review of the trial court and Appellate Court record shows that the considerations which

went into deciding the case were no different than any other permanent custody case coming before a trial and appellate court for decision.

The appellant mother attempts to convince this court that the one of the basis for termination of her parental rights was her economic status. This is unsupported by the record and the facts of this case. Appellant attempts to raise a smoke screen that the Trial Court and the Appellate Court drew incorrect conclusions from the evidence presented at trial or that the evidence was insufficient to support those conclusions. In other words, the appellant seeks to relitigate a claim that the judgments were against the manifest weight of the evidence; however, the appellant is not entitled to another review of the weight of the evidence at this stage of the proceedings and this court is not required to conduct such a review. State ex rel Pomery v. Webber 20 Ohio St. 2d 84; 206 N.E. 2d 204 (1965)

The Trial Court and The Court of Appeals found three factors enumerated in ORC 2151.414(E) as to mother, to be present in this case. First they found that ORC 2151.414(E) (1) was supported by the evidence. ORC 2151.414 (E) (1) provides:

- (1) Following 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.

In this case, the children were removed due to concerns for poor supervision, parenting concerns, mental health concerns for mother and sexual and physical abuse of the children. Under mother's case plan she was to attend a parenting program, a mental health assessment, domestic violence services, and a psychological evaluation. In re T.B., et al., (December 19, 2014), 6th Dist. No. L-14-1122, p 13. Mother was unable to secure independent housing. Id. Mother, exhibited a lot of resistance concerning the psychological evaluation, specifically, visiting Harbor but the agency was unable to obtain any information from Harbor because Mother revoked her consent for the release of such information. In re T.B. et al. (December 19, 2014), 6th Dist. No. L-14-1122, p 13-14. Mother's treatment plan at Harbor did not address the issues of sexual abuse concerning the children. (Id.) Mother never completed her psychological evaluation. (Id.) She was also persistent in her refusal to acknowledge the sexual abuse that had occurred in the home. (Id.)

As to mother's poor supervision of the children, several people observed mother with the children, and commented on her poor interactions with them. The Court of Appeals also noted that Mother requested to reschedule or shorten several of the visits to accommodate her school schedule. In re T.B. et al. (December 19, 2014), 6th Dist. No. L-14-1122, p. 14. In its opinion the Court of Appeals stated "In light of the foregoing testimony presented at the hearing, we cannot say that the juvenile court's conclusion that appellant failed to remedy the problems that initially caused the children to be removed from the home was against the manifest weight of the evidence."

At trial regarding the motion for permanent custody, mother admitted she pled guilty to child endangering for an incident involving injury to one of the children. Mother

admitted she was evicted from her housing in January because of housekeeping and still has not found another place. She admitted she had a mental health assessment and was diagnosed with depression disorder and attachment disorder and counseling was set up but her attendance has been sporadic. She admitted she wasn't honest at the assessment and told them that her sister had kidnapped the children and had put words in their mouths. She admitted her sister told her about the sexual abuse in December 2012 but she didn't believe her. She admitted she talked to the children and the father about it but didn't do anything about it. (T.P. 8-126)

Appellant's contention that her termination of her parental rights was due to her economic status is not supported by the facts in the record nor the Judgments of the Trial Court or the Court of Appeals. Her rights were terminated because she was given a case plan and she did not complete the services outlined in that plan.

The Court of Appeals also found that ORC 2151.414 (E) (15) was supported by the evidence. ORC 2151.414 (E) (15) states:

(15) The parent has committed abuse as described in section 2151.031 [2151.03.1] of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

In its opinion the Court of Appeals stated that "In particular, we conclude that appellant's neglect is demonstrated via her refusal to take the children's reports of sexual abuse seriously, and subsequent failure to remove the children from the environment in which they were being abused." T.B. et al. (December 19, 2014), 6th Dist. No. L-14-1122, p. 16. The Court went on to state "In addition, evidence was presented at the

hearing relating to physical abuse suffered by the children. Specifically, an incident occurred in October 2009 in which one of the children, who was unsupervised at the time, was burned with a hair dryer that was being used to keep the child warm. Appellant was subsequently convicted of child endangering as a result of this incident. Appellant also acknowledged at the hearing that appellant utilized discipline tactics involving forcing the children to stand in a corner until their feet hurt, and threatened to have the children 'whooped' with a belt by their father if they moved from the corner before she told them to do so." (Id) The Court further indicated "Based on this evidence, we cannot say the juvenile court's findings under R.C. 2151.414(E)(15) were against the manifest weight of the evidence."

Mother testified and admitted she caused an injury to one of the children and was later convicted of child endangering. She admitted that she would call the children's father to come and "whoop" the children if they moved from the corner she placed them in to punish them. She admitted the children told her about the sexual abuse and she did nothing about it and still exposed them to their father. (T.P. 8-126)

This case involved the same set of issues as in any permanent custody case: whether or not the parents achieved satisfactory progress during their case plan services so as to reduce the risk of harm to the children to an acceptable degree and whether or not an award of permanent custody was in the best interest of the children. Those issues are peculiar to the parents and children in each permanent custody case. They are of primary interest to the parties rather than the general public. This case is not appropriate for a discretionary appeal by this court and should be denied.

Proposition of Law Number 2:

APPELLANT IS NOT DENIED HER DUE PROCESS RIGHTS WHEN SHE HAD ADEQUATE NOTICE OF THE PERMANENT CUSTODY HEARING, WAS PRESENT AT THE PERMANENT CUSTODY HEARING, AND WAS REPRESENTED BY COUNSEL, THUS IT DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION.

Appellant argues that a constitutional question exists because her due process rights were violated. Appellant, in her argument, states, that her due process rights that were violated were that her termination was based solely on her “failure to protect” and the lower courts did not weigh other factors correctly. This again is just another attempt to relitigate a claim that the other judgments were against the manifest weight of the evidence, which should not be allowed. (See above argument)

Appellant is entitled to certain due process rights. In re. Morris 2006 Ohio 3231. She is entitled to “a hearing upon adequate notice, assistance of counsel, and (under most circumstances) the right to be present at the hearing itself.” (Id. At HN3)

In this case, the record reflects that Appellant received proper notice of the permanent custody proceeding, she was represented by counsel, and was present for all of the hearings. Appellant did not raise any arguments in the Court of Appeals that any of these due process rights were violated. A substantial constitutional question does not exist, and Appellant’s Discretionary Appeal should not be allowed.

Proposition of Law Number 3:

APPELLANT IS NOT ENTITLED TO A DISCRETIONARY APPEAL WHEN THE PERMANENT CUSTODY STATUTE HAS ALREADY BEEN HELD TO BE CONSTITUTIONAL

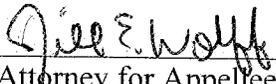
Appellant states that O.R.C. 2151(E)(1) is unconstitutional and discriminates against “poor” people thus creating a substantial constitutional question. In her argument, appellant states that her rights were terminated because she lacked housing and this was because of her economic status. Looking at the record however, Appellants rights were terminated based on three statutory factors, O.R.C. 2151.414(E)(1), O.R.C. 2151.414(E)(4), and O.R.C. 2151.414(E)(15). (See above discussion)

Ohio Courts have already determined Ohio’s permanent custody statute to be constitutional. “Because Ohio’s permanent custody statutory scheme reconciles a parent’s constitutional right with the state’s *parens patriae* interest in providing for the security and welfare of children under its jurisdiction, it does not unconstitutionally deprive parents of their parental rights.” In re S.R. 2006 Ohio App. Lexis 4921. Thus, a substantial constitutional question does not exist in this case.

CONCLUSION

Wherefore, Appellee respectfully requests that the Court find that this case does not meet the requirements of a case of public or great general interest or a substantial constitutional question, and requests that this honorable court deny jurisdiction.

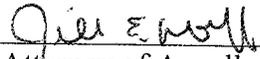
Respectfully submitted,



Attorney for Appellee
Lucas County Children
Services

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum in Opposition was sent by regular mail to: Latagia Copeland, 3149 N. Detroit Ave., Toledo, Ohio 43610, this 9 day of February 2015.



Attorney of Appellee
Lucas County Children
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