

[Cite as *In re Guardianship of Wright*, 2002-Ohio-404.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
DEFIANCE COUNTY**

**IN THE MATTER OF THE GUARDIANSHIP
OF VITORALEIGH M. WRIGHT**

CASE NO. 4-01-20

O P I N I O N

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Probate Division.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 1, 2002.

ATTORNEYS:

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For Appellees.

HADLEY, J.

{¶1} The appellant, April Amanda Jo Wright ("appellant"), appeals the decision of the Defiance County Court of Common Pleas Probate Division, granting temporary guardianship of her minor daughter, Vitoraleigh M. Wright ("Vitoraleigh"), to the appellees, Ms. Wright's parents (appellees). Based on the following, we reverse the decision of the lower court.

{¶2} The relevant facts of this case are as follows: The appellant gave birth to Vitoraleigh on September 19, 2000. At the time, the appellant was unmarried and no father was named on the birth certificate. During the last trimester of her pregnancy, and for some time after the birth, the appellant resided with the appellees in Defiance, Ohio. The appellant waited to seek prenatal care until she moved in with the appellees. Prior to Vitoraleigh's birth, the appellees had already been named guardians of the appellant's eldest child, Tobijah Lucas Lee Wright because of the appellant's inability to care for him.

{¶3} At some point after Vitoraleigh's birth, the appellant decided to resume her former transient lifestyle, moving briefly to Indiana and then to Tennessee, among other places. Apparently, the appellant and the baby's alleged father, Joseph G. Ausmus ("Mr. Ausmus"), attempted to set up residence in

Tennessee, allegedly renting an apartment together.¹ However, the appellant often returned home to the appellees' home for extended periods. Moreover, Mr. Ausmus admitted that he was still married to another woman at the time of the hearing, with whom he had three other children, and that, as a truck driver, he was frequently away from home. Although Mr. Ausmus eventually filed an Acknowledgement of Paternity, he waited until the day before the hearing in this case to do so.

{¶4} The appellant was unemployed both during and after her baby's birth, and chose to rely on gifts of money from Mr. Ausmus to support herself and her child. At the hearing, the appellant expressed that she saw no reason why she should have to work.

{¶5} The appellees filed for emergency temporary guardianship of Vitoraleigh on March 26, 2001, at which time the appellant was incarcerated at the Corrections Center of Northwest Ohio.² The motion was granted on the same day that it was filed. At the same time, the appellees filed an application to be appointed permanent guardians of the child. A hearing was held on April 23, 2001, at which time the trial court granted temporary guardianship to the appellees.

¹ The appellant did not present a copy of her lease nor any receipts from rent payments at the hearing.

² The appellant was released prior to the hearing of this case.

{¶6} The appellant now appeals, asserting one assignment of error for our review.

ASSIGNMENT OF ERROR

{¶7} The trial court erred in appointing non-parents as guardians of the person of a minor child without a finding that the minor's natural parents were unsuitable persons to have custody.

{¶8} The appellant contends that the trial court erred in granting temporary guardianship of Vitoraleigh to the appellees without first issuing a specific finding that the appellant was unsuitable as a parent. According to the appellant, such a finding is mandated by Ohio law.

{¶9} We have held that a determination regarding guardianship is within the sound discretion of the trial court.³ However, in making the determination, the trial court must be guided by R.C. 2111.06, which describes the circumstances under which a guardian shall be appointed for a minor child. The portion relevant to the case before us reads:

{¶10} A guardian of the person of a minor shall be appointed as to a minor * * * whose parents are unsuitable persons to have the custody and tuition of such minor, or whose interests, in the opinion of the court, will be promoted thereby.⁴

³ See *In the Matter of: the Guardianship of Jeremy Mitchell Eichhorn* (Dec. 21, 1984), Crawford App. No. 3-83-11, unreported.

⁴ R.C. 2111.06.

{¶11} Ohio law has long recognized the premise that natural parents have a paramount right, as against third parties, to custody of their children.⁵ In *In re Perales*, the Ohio Supreme Court determined that this paramount right of a natural parent to custody can only be overridden when "a preponderance of the evidence indicates abandonment, contractual relinquishment of custody, total inability to provide care or support, or that the parent is otherwise unsuitable."⁶ The *Perales* court elaborated on the meaning of unsuitability, stating that it means "that an award of custody would be detrimental to the child."⁷

{¶12} Although *Perales* dealt with a custody petition under R.C. 2115.23(A)(2), the holding has been extended to many other custody cases involving natural parents versus third parties.⁸ At least one of our sister courts of appeals has applied the decision to R.C. 2111.06, the guardianship statute applicable here.⁹ Thus, the question before us is whether the trial court determined that the appellant was unsuitable, in other words that awarding her custody would be detrimental to the child, before granting a temporary guardianship over the appellant's child.

⁵ *Clark v. Bayer* (1877), 32 Ohio St. 299; *In re Perales* (1977), 52 Ohio St.2d 89.

⁶ *Perales*, 52 Ohio St.2d at 98.

⁷ *Id.*

⁸ Cf. *In re Hua* (1980), 62 Ohio St.2d 277 (applying *Perales* to a *habeas corpus* proceeding); *Thrasher v. Thrasher* (1981), 30 Ohio App.3d 210 (case involving a divorce action); *In re Justice* (1978), 59 Ohio App.2d 78 (extending *Perales* to case involving dependency/neglect).

⁹ *In the Matter of: Jason J. Jewell* (4th Dist., Dec. 6, 1984), Athens App. No. 1190.

{¶13} The appellant seems to suggest that the trial court was required to use the word "unsuitable," or some variation thereof, in its findings in order to meet statutory requirements. We are not persuaded that this is necessary, although it is certainly preferable. However, we do find that the record must reflect that the trial court applied the *Perales* standard and made sufficient factual findings to support it.

{¶14} At the close of the hearing, the trial court made the following statement on record:

{¶15} THE COURT: * * * I am convinced that at the present time, April is not in a position to care for this child for the following reasons. We have had stable housing for one month, or a little longer, maybe two. I am sorry, two months is not stable * * * . And there has been no history of long term stability, it has been in and out, in and out of everywhere. We have no independent income * * * . We have another child here[.]

{¶16} These brief findings are not sufficient to satisfy this Court that a preponderance of the evidence showed that the appellant was an unsuitable parent, as required by *Perales*.

{¶17} Accordingly, the appellant's sole assignment of error is well-taken.

{¶18} Having found error prejudicial to the appellant, in the particulars assigned and argued, we reverse the judgment of the trial court and remand the matter for further proceedings consistent with this opinion.

Judgment reversed and remanded.

WALTERS, J., concurs.

SHAW, P.J., dissents.

SHAW, P.J., dissenting.

{¶19} I respectfully dissent from the majority opinion. In addition to the findings made expressly by the trial court,¹⁰ a review of the record indicates that evidence was presented regarding the appellant's history of assault charges, her lack of interest or ability in providing for Vitoraliegh's basic needs, and her history of suicide attempts, among other problems. All of this amounts to ample evidence that the appellant was, at the time, an unsuitable parent.

{¶20} The majority seems to suggest that the trial court should have used the word "unsuitable," or some variation thereof, in its findings in order to meet statutory requirements. I am not persuaded that the law requires this. On the contrary, considering the totality of the record in this case, I believe that requiring the trial court to make additional findings or to expressly use the word "unsuitable," as opposed to the trial court's language that the appellant was not in a position to care for the child, raises semantics over substance. I would affirm the judgment of the trial court.

¹⁰ The court stated, in relevant part:

* * * I am convinced that at the present time, April is not in a position to care for this child for the following reasons. We have had stable housing for one month, or a little longer, maybe two. I am sorry, two months is not stable * * * . And there has been no history of long term stability, it has been in and out, in and out of everywhere. We have no independent income * * * . We have another child here[.]