

**[Cite as *In re McCune/Warnken Children*, 2004-Ohio-2826.]**

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN RE: MCCUNE/WARNKEN CHILDREN

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John F. Boggins, J.

Case No. 2004CA00083

OPINION

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of  
Common Pleas, Juvenile Division, Case  
No. JU123281

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 1, 2004

APPEARANCES:

For Appellee

For Appellant

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Department Of Job & Family Services  
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*Hoffman, P.J.*

{¶1} Appellant Shaunna Duma (“mother”) appeals the February 9, 2004 Judgment Entry entered by the Stark County Court of Common Pleas, Juvenile Division, which terminated her parental rights, privileges, and obligations with respect to her four minor children, and granted permanent custody of those children to appellee Stark County Department of Job and Family Services (“Agency”).

#### STATEMENT OF THE FACTS AND CASE

{¶2} On July 23, 2002, the Agency filed a Complaint in the Stark County Court of Common Pleas, Juvenile Division, alleging Daisy McCune (DOB 2/29/96), Richard Warnken, Jr. (DOB 5/15/98), Crista Jo Warnken (DOB 5/10/99), and Nathaniel Warnken (DOB 6/6/01) to be dependent and neglected children. The complaint was based upon the Agency’s concerns of inadequate care and physical abuse in the home. At the time of the filing of the complaint, mother was in the intensive care unit at Aultman Hospital after attempting to commit suicide by ingesting a bottle of Tylenol. Mother had been hospitalized in August, 2001, for a prior suicide attempt. The trial court granted temporary custody of the children to the Agency at a shelter care hearing on July 24, 2002. At the adjudicatory hearing on October 10, 2002, Richard Warnken, father of Richard, Jr., Crista Jo, and Nathaniel, stipulated to a finding of dependency. Mother did not appear at the hearing but her counsel stipulated to a finding of dependency.<sup>1</sup>

{¶3} Via Judgment Entry dated October 10, 2002, the trial court placed the children with their paternal grandmother. On June 18, 2003, the Agency filed a Motion for Permanent Custody. The matter came on for final hearing on August 11, 26, 2003. Via Judgment Entry filed February 9, 2003, the trial court terminated mother’s parental rights,

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<sup>1</sup> Jericho McCune, alleged father of Daisy McCune, was served by publication, but never appeared at any of the proceedings in this matter.

responsibilities, and privileges, and granted permanent custody of the children to the Agency. The trial court issued findings of fact and conclusions of law on the same day.

{¶4} It is from the February 9, 2003 Judgment Entry mother appeals raising the following assignments of error:

{¶5} “I. THE TRIAL COURT ERRED IN FINDING THAT IT IS IN THE MINOR CHILDREN’S BEST INTEREST THAT THEY BE PLACED IN THE PERMANENT CUSTODY OF SCDJFS AS SCDJFS FAILED TO MEET ITS BURDEN OF PROOF REQUIRING CLEAR AND CONVINCING EVIDENCE.

{¶6} “II. THE TRIAL COURT ERRED IN GRANTING THE MOTION FOR PERMANENT CUSTODY THEREBY TERMINATING THE PARENTAL RIGHTS OF APPELLANT DUMA AS THE TRIAL COURT’S FINDINGS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHICH COULD ONLY LEAD TO ONE CONCLUSION THAT CONTRARY TO THE JUDGMENT OF THE TRIAL COURT.”

{¶7} This appeal is expedited and is being considered pursuant to App. R. 11.2.

I, II

{¶8} Because mother’s assignments of error are interrelated, we shall address said assignments together. Mother submits the trial court’s findings in support of its decision to grant permanent custody of the children to the Agency and findings with respect to the best interest of the children were against the manifest weight of the evidence.

{¶9} 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. CA5758, unreported. 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.* (1978), 54 Ohio St.2d 279.

{¶10} R.C. 2151.414(B)(1), which addresses under what circumstances a trial court may grant permanent custody, provides:

{¶11} "(B)(1) 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:

{¶12} "(a) The child is not abandoned or orphaned or 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 ending on or after March 18, 1999, 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.

{¶13} "(b) The child is abandoned.

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

{¶15} "(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 ending on or after March 18, 1999."

{¶16} In determining the best interest of the children, R.C. 2151.414(D) provides:  
"the court must consider all relevant factors, including, but not limited to, the following:

{¶17} "(1) The interaction and interrelationship of the child and his parents, siblings, relatives, foster parents and out-of-home providers, any other person who may significantly effect the child;

{¶18} "(2) The wishes of the child, as expressed directly or indirectly by the child or through his guardian ad litem, with due regard for the maturity of the child;

{¶19} "(3) The custodial history of the child;

{¶20} "(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."

{¶21} Dr. Gerald Bello testified he completed a psychological evaluation of mother in August, 2002. Through the evaluation, Dr. Bello concluded mother is a bright woman with a very high reasoning ability. However, the results of the Minnesota Multi-Basic Personality Inventory indicated a lot of trauma and turmoil. Dr. Bello found mother's psychological energy to be low, which is suggestive of depression. He further testified the personality inventory showed mother to be an impulsive individual who would probably have a difficult time gaining insight into what was going on as well as a difficult time dealing with her life in an effective way. Dr. Bello's primary concerns with mother was her unpredictability and depression. Mother presented a history of depression and treatment for depression, a couple of suicide attempts and substance abuse. Mother advised Dr. Bello her depression began in high school and she had two current suicide attempts in 2000, and in 2001. Dr. Bello noted, despite mother's intelligence, she has been unable to

resolve her depression with therapeutic assistance. Dr. Bello did not see mother as a physical threat to the children, but noted mother's depression can be very severe and disabling at times, which raises concerns about her psychological stability and unpredictability.

{¶22} Dr. Bello recommended Quest Recovery Services for substance abuse issues, a consult for medication, establishment of independent housing, and biweekly psychotherapy. He further recommended the children remain in their current placement until mother had a successful year.

{¶23} Mother was called as if on cross by the Agency. She stated she was given a copy of her case plan and was aware of the requirements set forth therein. Mother testified she completed her psychological evaluation and was currently on medication. Mother acknowledged she had attempted to commit suicide as recently as February, 2003. Although mother was aware of the requirement to submit to urinalysis, she failed to do so. Mother further testified she had been terminated from Goodwill parenting class. Mother was currently employed at Kentucky Fried Chicken. With respect to her housing situation, mother testified she had resided in an apartment at the commencement of the action, but had been evicted. She moved to the YWCA, but was asked to leave due to rule violations. Mother moved in with her father, who had sexually abused her as a child. From there, mother moved in with her mother, a drug user. Her current residence, although spacious, does not have working utilities. Further, mother's mother stays with her several nights a week.

{¶24} Vicki Mitchell, the ongoing service provider from the Agency, testified the children are placed together with a relative. The children are doing well in school and are

bonded to their placement. The grandmother with whom the children are living is willing to adopt the children and maintain them as sibling group. With respect to mother's visitation with the children, Mitchell testified mother and the father would fight in front of the children and mother did not show up at the scheduled visit times. There were two gaps, each in excess of a month, when mother did not visit the children. Mitchell noted mother appears loving towards the children at her visits, but has a difficult time controlling the four children at the same time and becomes easily overwhelmed.

{¶25} Mitchell further testified mother had completed her psychological evaluation and had enrolled in services for her mental health treatment at Nova. Mother's compliance with Nova had been sporadic, missing numerous appointments and going off her medication. Mother had been terminated from psychotherapy for noncompliance, but had recently recommenced with a new therapist.

{¶26} Tameka West, mother's case manager from Nova, testified mother's psychotherapy services had been terminated for noncompliance with appointments. Further, mother went through periods of non compliance with her psychiatric services. Although West arranged transportation for mother to get to her appointments, mother would not be around when the transportation arrived. West's supervisor recommended she close mother's case because the supervisor felt West was doing more work than mother was doing on the case. West believed mother had attempted suicide twice during the last year. Although mother was referred to the SAMI program at Nova, which deals with clients with substance abuse and mental health concerns, mother was terminated from the program. Additionally, mother did not submit to urinalysis.

{¶27} The trial court inquired of mother concerning her substance abuse and the lack of urine drops. Mother informed the trial court she no longer used illegal drugs and had not used for “about three months.” Mother stated she mainly used marijuana, but admitted using cocaine one night at the beginning of the case. The trial court asked mother if she would be willing to submit to an immediate urinalysis. Neither counsel for the Agency nor mother objected. Mother submitted to the urinalysis, which came back positive for cocaine.

{¶28} Based upon the foregoing, we find the Agency presented clear and convincing evidence it was in the best interest of the children to be placed in the permanent custody of the Agency. We further find the trial court’s findings were supported by some competent, credible evidence and were not against the manifest weight of the evidence.

{¶29} Mother first and second assignments of error are overruled.

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

By: Hoffman, P.J.

Farmer, J. and

Boggins, J. concur

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JUDGES



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

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JUDGMENT ENTRY

Case No. 2004CA00083

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Stark County Court of Common Pleas, Juvenile Division is affirmed. Costs assessed to appellant.

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JUDGES