

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

A.R. AND C.R.

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case Nos. 10 CAF 02 0018

10 CAF 02 0019

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Juvenile Division, Case Nos. 07-09-1716-
02-C and 07-09-1717-02-C

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 11, 2010

APPEARANCES:

For Appellant

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Farmer, J.

{¶1} Appellee, the Delaware County Department of Job and Family Services, became involved with the Randolph family in September of 2007. Children are A.R. born April 13, 2005 and C.R. born July 18, 2007. Mother of the children is Angela Randolph; father is appellant, Christopher Randolph. On December 11, 2007, the children were adjudicated dependent and a case plan was established.

{¶2} On March 12, 2009, appellee filed a motion for permanent custody. Hearings were held on December 15, 2009 and January 14, 2010. By judgment entry filed January 26, 2010, the trial court granted permanent custody of the children to appellee.

{¶3} Appellant filed two appeals and this matter is now before this court for consideration. The assignment of error in each appeal is as follows:

I

{¶4} "THE TRIAL COURT ERRED IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTEREST OF THE CHILD TO GRANT PERMANENT CUSTODY TO THE DELAWARE COUNTY, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES."

I

{¶5} Appellant claims the trial court erred in granting permanent custody of the two children to appellee. Specifically, appellant claims the trial court lacked clear and convincing evidence to determine that the best interests of the children were best served by granting appellee permanent custody, and the trial court erred in failing to consider relative placement. We disagree.

{¶6} 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 fact finder could base its judgment. *Cross Truck v. Jeffries* (February 10, 1982), Stark App. No. CA-5758. 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 Construction* (1978), 54 Ohio St.2d 279.

{¶7} R.C. 2151.414(E) sets out the factors relevant to determining permanent custody. Said section states in pertinent part as follows:

{¶8} "(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶9} "(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.

{¶10} "(16) Any other factor the court considers relevant."

{¶11} R.C. 2151.414(B)(1) enables a trial court to grant permanent custody if the court determines by clear and convincing evidence that it is in the best interest of the child:

{¶12} "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:

{¶13} "(a) The child is not abandoned or orphaned, 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,**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.

{¶14} "(b) The child is abandoned.

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

{¶16} "(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***."

{¶17} R.C. 2151.414(D)(1) sets out the factors relevant to determining the best interests of the child. Said section states relevant factors include, but are not limited to, the following:

{¶18} "(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;

{¶19} "(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;

{¶20} "(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***;

{¶21} "(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;

{¶22} "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶23} It is undisputed that the children had been in appellee's temporary custody for at least twelve months or more of a consecutive twenty-two month period. T. at 216-217.

{¶24} As appellant points out, the issue is whether the trial court's decision to grant appellee permanent custody is within the children's best interests. In order to address this issue, it is necessary to review the history of appellee's involvement with the family.

{¶25} Originally, a referral was made to appellee in September of 2007. T. at 116. At that time, appellant and the children were living in a house with "no electricity operating in the house; there was no water operating, functioning in the house; the house was completely trashed inside; there was garbage bags piled up; there was furniture all over; clothing all over; the odor was unbearable***." T. at 117-118. The children were temporarily placed with a grandparent. T. at 119-120, 122.

{¶26} Thereafter, Tina Keller became the family's Family Advocate. T. at 76. Despite some twenty-one counseling sessions, the home environment did not improve. T. at 76-77, 79. There was no basic improvement in hygiene or parenting skills, and the goal of making the home more stable and safe was not met. T. at 77-79. On one occasion, Ms. Kessler arrived at the home and found A.R. "asleep in the highchair with [the child's] face in the food." T. at 80. The parents were asleep. After waking them, the parents explained A.R. "had fallen asleep after eating dinner and they decided to leave them there." Id. On another occasion, Ms. Kessler arrived at the home "between 11:00 and 1:00 p.m. and [A.R.] was asleep on the bathroom floor with the door shut, that's where [the child] had fallen asleep the night before." T. at 81. "And at that point [the child] was only two." Id. Following the sessions, the children were removed from the home. T. at 83.

{¶27} On December 11, 2007, the children were adjudicated dependent and were returned to the parents, and a case plan was established. T. at 135. The parents were to complete parenting classes and undergo counseling and mental health assessments, and a protective daycare was ordered. T. at 135-136. Appellee maintained protective supervision. T. at 136.

{¶28} Despite the plan, one of appellee's ongoing caseworkers, Rose Powers, testified A.R. was not going to protective day care, and C.R.'s medical needs were not being met. T. at 136-137. Both children were not gaining weight and there was evidence of malnutrition. T. at 138.

{¶29} Ms. Powers testified to the following reunification efforts provided to the parents:

{¶30} "Q. I provided gas vouchers; provided visitation referral services; hooked them up with services; case work counseling; working with them; going into the home and helping them prioritize what needed to be cleaned on which day; working with the daycare center to make sure that that was all set up, that meant me coordinating with the daycare providers, as well as our office, to apply for help to complete the paperwork to assist them in making sure that every dot was connected so the children could be in daycare and the parents would know what to do.

{¶31} "The gas vouchers were to assist in transportation. There were many gas vouchers provided to both parents to make sure that the children got to and from daycare." T. at 139-140.

{¶32} In May of 2008, the children were removed again and placed with foster care because the grandparent "could not provide or protect for the children." T. at 140-141.

{¶33} From December 2008 to February 2009, the parents lived with Joyce Franks and her husband after Ms. Franks discovered they were living in their car and it was extremely cold. T. at 37-38. The Franks offered them free lodging provided they seek employment, do chores, and attend church with them. T. at 39. Despite this offer of help, the parents did not obtain jobs, and their hygiene and uncleanliness habits surfaced at the Franks' home. T. at 40, 42-44.

{¶34} The parents did complete parenting classes and received assessments, but there was still a lack of parenting skills, steady employment, and good hygiene. T. at 144, 152, 218-219, 222, 225-226, 230, 250; Exhibit F-2. As stated by Ms. Powers, the parents "did the best they could." T. at 156.

{¶35} During agency visitations, the parents lacked motivation to interact with the children. T. at 142, 223. "Sometimes mom would sleep during the visits. Sometimes dad would just sit there and not interact with the children." T. at 142. "In 2008 approximately a third of the visits were missed. The parents, as of late, have been doing a better job at coming to visits." T. at 232.

{¶36} The parents were habitually late for appointments and missed appointments with the caseworker and the therapist. T. at 233-234, 345-346, 347-349. As a result of the poor attendance, there was a lack of progress. T. at 351. At the time of the hearing, the parents lived with the children's maternal grandfather in Upper

Sandusky, Ohio. T. at 240. It was noted that the parents never really learned and applied what was suggested. T. at 229.

{¶37} Despite all the efforts, the children were very uncomfortable during visitations and had a very strong affection for their foster parents. T. at 228-229, 236.

{¶38} Another ongoing caseworker, Ashley Wyatt, testified she had concerns about the parents' ability to raise the children:

{¶39} "The same concerns that were present when this case opened are present 23 month later: The difficulty parenting; the difficulty getting to appointments; the motivation; the income; the stability of their housing; all of these things were concerns two years ago and remain a concern today." T. at 250.

{¶40} Based upon the evidence presented, we find appellee made more than diligent efforts to reunify the family. In fact, the family was reunified, but the same issues arose despite all of appellee's combined efforts. We concur with the trial court's following Conclusion of Law No. 7:

{¶41} "Although Christopher and Angela Randolph have made some progress towards the Case Plan goals, the underlying concerns that caused the minor children to be placed outside of the parent's home remain. The parents have failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside of the home. Christopher and Angela Randolph do not have stable and permanent housing for their children. Christopher and Angela Randolph have been given every opportunity to regain custody of their children, including free housing and support from a Good Samaritan, Joyce Franks. Further, DCDJFS has given the Randolph's (sic) necessary services to help the parents with their case plan goals, but

the Randolph's (sic) continually fall short in their attempts to remedy the outlined Case Plan concerns.

{¶42} "Additionally, the parents consistently demonstrate an inability to implement proper parenting skills in the care of their children. The Randolph's (sic) have completed two (2) parenting classes but are unable to apply those skills to their children without constant prompting. Further, Christopher and Angela Randolph are unable to make appointments in a timely manner or stay awake during scheduled meetings. The parents do not demonstrate an ability to care for themselves independently, without the added responsibility of children. The evidence presented clearly demonstrates and (sic) [A.R. and C.R.] cannot be placed with their parents within one (1) year of the January 14, 2010 Permanent Custody hearing." See, Judgment Entry filed January 26, 2010.

{¶43} The second issue raised is that the trial court erred in granting appellee permanent custody when alternative relative placement was available.

{¶44} Ms. Powers testified there were concerns that the grandparent who had originally taken placement of the children in 2007, the maternal grandmother, could not protect the children, "[t]here's so much chaos that was going on that she had to take care of. She was overwhelmed, Your Honor, in my professional opinion, she was overwhelmed." T. at 170. The grandmother told Ms. Wyatt that she would call her to schedule a home study, but she never did. T. at 244. The maternal grandfather did not express an interest in having custody of the children. T. at 250. The paternal grandfather contacted appellee about having a home study done, but never followed "through with having the home study done." Id. Eric Carter, appellant's uncle, testified

he and his wife were still interested in legal custody of the children. T. at 367. Previously, a home study was done and visitations were had, but the Carters withdrew their request for custody because of visitation difficulties and financial issues for an attorney. T. at 245-247, 249, 366.

{¶45} Other than the parties mentioned, the parents did not have any other additional names for possible relative placement. T. at 245.

{¶46} We find the record supports the trial court's following Conclusion of Law No. 8:

{¶47} "There is no relative (kinship) placement available at the time of the January 14, 2010 Permanent Custody hearing. Although Eric and Angela Carter have expressed interest in legal custody of the minor children, the couple withdrew the Motion for Legal Custody prior to the Permanent Custody hearing. The DCDJFS has considered and made best efforts to facilitate kinship placements. The DCDJFS is unable to place the minor children with a relative or kinship placement."

{¶48} Upon review, we find the trial court did not err in finding, by clear and convincing evidence, that the best interests of the children would best be served by granting appellee permanent custody of the children.

{¶49} The sole assignment of error is denied.

{¶50} The judgment of the Court of Common Pleas of Delaware County, Ohio, Juvenile Division is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

S/ Sheila G. Farmer

S/ W. Scott Gwin

S/ Patricia A. Delaney

JUDGES

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