

IN THE COURT OF APPEALS  
 TWELFTH APPELLATE DISTRICT OF OHIO  
 FAYETTE COUNTY

IN THE MATTER OF: :  
 M.H., et al. : CASE NO. CA2011-10-022  
 : OPINION  
 : 5/21/2012  
 :  
 :

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS  
 JUVENILE DIVISION  
 Case No. 10AND0597

Susan Wollscheid, P.O. Box 176, Washington C.H., Ohio 43160, Guardian Ad Litem  
 Nicholas A. Adkins, 67 East Hight Street, London, Ohio 43140, for appellant, C.G.  
 Jess C. Weade, 129 North Hinde Street, Washington C.H., Ohio 43160, for appellee  
 James B. Roach, 110 East Court Street, Washington C.H., Ohio 43160, for appellee  
 Seth Hodge, 892 Davis Court, Washington C.H., 43160, pro se  
 Susan Hodge, 834 Kohler Drive, Washington C.H., 43160, pro se

**HUTZEL, J.**

{¶ 1} Appellant, C.G., the biological mother of M.H., appeals a decision of the Fayette County Court of Common Pleas, Juvenile Division, removing her daughter from her house

and temporarily excluding appellant as a placement option for the child.<sup>1</sup>

{¶ 2} M.H. was born in April 2005. On June 23, 2010, the Fayette County Department of Job and Family Services (the Agency) filed a complaint alleging that M.H. was an abused and dependent child because she had been sexually abused by an older sibling while in appellant's home. On August 2, 2010, the Agency filed a new complaint alleging that M.H. was an abused, neglected, and dependent child because she had been sexually abused by an adult male while in appellant's care.

{¶ 3} On August 19, 2010, the juvenile court adjudicated M.H. a dependent, neglected, and abused child, and placed her in the temporary custody of the Agency. In its judgment entry, the juvenile court found that "this latest incident is the second time in less than two months that [M.H.] has been victimized by sexual abuse while in the care of her mother." M.H. was placed with a foster family.

{¶ 4} While in foster care, M.H. was diagnosed with post-traumatic stress disorder. M.H. was also hospitalized for over a week after her behavioral problems escalated. During her hospitalization, she was placed in seclusion on five separate occasions. Eventually, M.H.'s behavioral problems became too much for the foster family which notified the Agency it was no longer willing to keep M.H. Unwilling and unable to place M.H. in a long term residential treatment facility due to her young age (she was then six years old), the Agency placed M.H. with appellant on May 5, 2011. Five days later, M.H. was hospitalized for 12 days at a mental health facility after acting out at school. The Agency continued to have temporary custody of the child.

{¶ 5} The Agency subsequently filed a new case plan for M.H. reflecting the fact she was living with appellant and listing goals and requirements for appellant. The juvenile court

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1. Appellant initially appealed the decision of the juvenile court with regard to two of her children, her daughter M.H. and her son D.H. Appellant subsequently moved to dismiss her appeal regarding D.H. on the ground it was inadvertently filed. By entry dated April 26, 2012, this court granted appellant's motion to dismiss.

declined to approve or adopt the case plan; a review hearing was held. On September 7, 2011, the juvenile court (1) found it was in the child's best interest that temporary custody of M.H. remain with the Agency, (2) ordered the Agency to remove M.H. from appellant's home and forbade the Agency from placing M.H. back with appellant until further order of the court, (3) ordered the Agency to file a new case plan, and (4) set the matter for a review hearing in October 2011.

{¶ 6} Appellant appeals, raising one assignment of error:

{¶ 7} THE TRIAL COURT ERRED IN THAT THE VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. [SIC]

{¶ 8} Appellant argues that the juvenile court's decision to remove M.H. from her home was against the manifest weight of the evidence because the evidence shows that M.H.'s physical, emotional, and mental needs were met when M.H. was in her care.

{¶ 9} 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. *In re Pieper Children*, 85 Ohio App.3d 318, 327 (12th Dist.1993). Reversing a judgment on manifest weight grounds should only be done in exceptional circumstances, when the evidence weighs heavily against the judgment. *In re G.S.*, 10th Dist. No. 05AP-1321, 2006-Ohio-2530, ¶ 4.

{¶ 10} Further, when reviewing a trial court's decision on a manifest weight of the evidence basis, an appellate court is guided by the presumption that the findings of the trial court were correct. *In re S.M.*, 12th Dist. No. CA2009-02-008, 2009-Ohio-4677, ¶ 19. This deferential view rests with the knowledge that the trial court was best able to view the witnesses, observe their demeanor, gestures and voice inflections, and use these observations in evaluating the credibility of their testimony. *In re McCain*, 4th Dist. No. 06CA654, 2007-Ohio-1429, ¶ 8.

{¶ 11} Following adjudication, the juvenile court placed M.H. in the temporary custody of the Agency pursuant to R.C. 2151.353(A), and subsequently continued the Agency's temporary custody as permitted under R.C. 2151.419. *In re Bolser*, 12th Dist. Nos. CA99-02-038 and CA99-03-048, 2000 WL 146026, \*7 (Jan. 31, 2000). Once a juvenile court issues a dispositional order pursuant to R.C. 2151.353, it may review at any time the placement or custody of the child, the case plan prepared for the child, the actions of the agency in implementing that plan, and any other aspects of the child's placement or custody arrangements. R.C. 2151.417(A).

{¶ 12} In conducting the review, the juvenile court must determine the safety and appropriateness of continuing the child's placement or custody arrangements and whether any changes should be made with respect to these arrangements. *Id.* Based upon the evidence presented at a hearing, the court may require the agency to take any reasonable action that the court determines is necessary and in the best interest of the child or to discontinue any action that it determines is not in the best interest of the child. *Id.*; *In re Bolser*.

{¶ 13} A trial court's decision concerning the best interests of a child is subject to reversal upon a showing of an abuse of discretion. *In re S.M.*, 2009-Ohio-4677 at ¶ 20. An abuse of discretion is more than simply an error of law or judgment; it is a finding that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 14} The juvenile court removed M.H. from appellant's home and temporarily excluded appellant as a placement option for the child after making the following findings: (1) the foster family could no longer keep M.H. due to her behavioral problems; (2) shortly after being placed with appellant, M.H. was hospitalized for 12 days at a mental health facility after acting out at school; (3) while in appellant's care, M.H. was dirty and had numerous bug bites

which appellant treated with an ointment; (4) according to appellant, M.H.'s behavior has greatly improved since she has been living with appellant, although her testimony was not independently verified; and (5) M.H. was observed to be in the company of an unknown adult male, without supervision. Appellant initially identified the man as a James Miller but later retracted her statement. The record shows that the juvenile court was troubled by the fact that even though M.H. was twice sexually abused while in appellant's care, she was placed back with appellant less than a year later, yet, following the placement, the Agency visited appellant's home only once a month.

{¶ 15} We find that the testimony presented at the hearing amply supports the trial court's decision. At the time of the hearing (August 16, 2011), M.H. was still living with appellant. The caseworker testified that M.H. was no longer in school, was properly fed and was taking her medication, was receiving counseling, and had numerous bug bites on her body, including a "huge" one over her eye. The caseworker also testified that since being placed with appellant, M.H. has had dirty hair and clothes; by contrast, she was "always clean and appropriate" when she was in foster care.

{¶ 16} Appellant testified that M.H. was receiving counseling and taking her medication. Appellant testified that she used an over-the-counter ointment to treat M.H.'s bug bites. Although M.H. had a medical card and started having bug bites in June 2011, appellant admitted she never took M.H. to a doctor.

{¶ 17} With regard to M.H.'s behavioral problems (described as "rages" by the caseworker and as tantrums by appellant), the caseworker testified that after she was placed with appellant, M.H. continued to have these outbursts at school. In fact, a few days after she was placed with appellant, M.H. was hospitalized for 12 days following such an outburst at school. However, M.H.'s behavior was "pretty decent" at home during the caseworker's visits.

{¶ 18} Appellant testified that while M.H. still has tantrums at home, they do not involve cussing, throwing things, and/or beatings. In addition, they do not last as long and never require hospitalization or a visit to the doctor's office. Appellant testified that she controls M.H.'s tantrums by putting her in a timeout and, 20 minutes later, M.H. is "good to go." The caseworker confirmed being told the same thing by appellant.

{¶ 19} With regard to the fact M.H. was observed to be in the company of an unknown adult male, the following testimony was elicited: the caseworker testified she was driving by appellant's home one evening when she saw M.H. out on the trampoline with a man she did not know and had never seen before. The next day, she called appellant who, based on the description given by the caseworker, said the man was probably James Miller, her step-father. Miller has a prior gross sexual imposition conviction involving an 11-year-old child. Subsequently, appellant "changed her story completely" and said the man was her fiancé, and not Miller. Appellant was not home at the time of the incident.

{¶ 20} Appellant testified the caseworker called her two days after the incident. Based on the caseworker's description, appellant told her, "the only person that could have been was my step-dad." When the caseworker called back, appellant told her the man could not have been Miller as the only persons at the house that evening were her fiancé, her mother, and M.H. Appellant testified that to her knowledge, Miller was not around M.H. that day. In addition, appellant claimed M.H. has not been around Miller since the summer of 2010.

{¶ 21} Upon a thorough review of the record, we find that competent, credible evidence supports the juvenile court's decision to continue the Agency's temporary custody of M.H., to remove M.H. from appellant's home, and to temporarily exclude appellant as a placement option for the child. The juvenile court was presented with conflicting testimony. However, because a juvenile court has the opportunity to observe a witness' demeanor, the juvenile court "has the better ability to evaluate witness credibility and to determine which

persons are best suited to care for the child." *In re McCain*, 2007-Ohio-1429 at ¶ 16. The juvenile court's decision is therefore not against the manifest weight of the evidence. Appellant's assignment of error is overruled.

{¶ 22} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.