

[Cite as *In re T.R.*, 2010-Ohio-426.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

T.R.  
P.R.  
D.R.

Minor Children

JUDGES:

Hon. W. Scott Gwin, P. J.  
Hon. Sheila G. Farmer, J.  
Hon. John W. Wise, J.

Case No. 2009 CA 00236

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Juvenile Division, Case No. 07 JCV  
00991

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 8, 2010

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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*Wise, J.*

{¶1} Appellant-Mother Chaunte Reynolds appeals the August 18, 2009 Judgment Entry, and August 18, 2009 Findings of Fact and Conclusions of Law entered by the Stark County Court of Common Pleas, Family Court Division, which terminated parental rights, responsibilities and obligations with respect to the three minor children, and granted permanent custody of the children to Appellee Stark County Department of Job and Family Services (“SCDJFS”).

{¶2} This case comes to us on the expedited calendar and shall be considered in compliance with App.R. 11.1(C).

#### **STATEMENT OF THE FACTS AND CASE**

{¶3} Appellant Chaunte Reynolds and Paul Robinson are the biological parents of T.R. (dob 1/19/05), P.R. (dob 1/12/06), and D.R. (dob 3/12/07).

{¶4} On August 17, 2007, the Stark County Department of Job and Family Services filed a Complaint alleging the children to be dependent, neglected and/or abused.

{¶5} Father, Paul Robinson, was incarcerated throughout the pendency of this action. He is not scheduled to be released from prison until 2012.

{¶6} The trial court placed the children in the temporary custody of the Department following an emergency shelter care hearing on August 21, 2007, wherein Chaunte Reynolds (Mother) appeared and stipulated to the court’s finding of probable cause. The matter was set for hearing on September 12, 2007.

{¶7} The matter was set for trial for October 19, 2007 after the parties failed to reach an agreement at the September 12, 2007, hearing.

{¶8} At the adjudicatory hearing conducted on October 19, 2007, SCDJFS amended its Complaint, withdrawing the allegation of neglect. Mother stipulated to a finding of dependency. The trial court approved and adopted a case plan.

{¶9} On July 16, 2008, following a motion for extension of temporary custody, such temporary custody was extended to February 17, 2009. A second extension was requested on January 8, 2009.

{¶10} On February 9, 2009, SCDJFS amended their request for extension of temporary custody to a request for permanent custody.

{¶11} The initial phase of the permanent custody hearing took place on April 21, 2009 and April 27, 2009. The best interest hearing took place on August 11, 2009. Appellant father was transported from prison and was present at these hearings.

{¶12} Lisa Eggenschwiler, the ongoing family service worker assigned to the minor children in this action, testified that the initial and primary concern which resulted in the Department's involvement was the deplorable conditions of the home. (T. at 6). The home was very dirty and the children were sleeping on mattresses on the floor. Id. There were also reports that the home had drug activity. Id. The Department also became concerned when one of the children was taken to the hospital by a third party and the Mother could not be located. (T. at 7). Upon investigation, the Department learned that P.R. and T.R. were living with different seventeen year olds and D.R. was living with a nineteen year old. Id. The Department further learned that the Mother had placed the children in these homes in June of 2007. (T. at 7-8).

{¶13} Eggenschwiler detailed the requirements of the case plan, the purpose of which was to facilitate reunification. The recommendations made as a result of

Mother's parenting evaluation included her participation in a parenting education program; participation in anger management counseling; seek employment and provided two verifications a week showing that she had applied for jobs; complete a drug assessment through Quest and submit to random urine screens; and obtain appropriate housing.

{¶14} No parenting assessment was done for Paul Robinson due to his current incarceration and the fact that he is not expected to be released until 2012.

{¶15} Eggenschwiler stated that while Mother did make some inroads on her case plan, she failed to maintain steady employment and failed to obtain appropriate housing,

{¶16} Anita Young testified during the best interest portion of the hearing. She stated that T.R., D.R. and P.R. are African-American, that the children do not have any developmental or behavioral problems, and that the children have no obvious special needs. (T. III. at 6). She stated that D.R. does have severe asthma, for which he had to be on a nebulizer several times a week. Id. She further stated that the children had been in the Department's custody since August 20, 2007. She stated that the children have all bonded with their foster family and that they call their foster parents "Mom" and "Dad". (T. III. at 7).

{¶17} She further stated that their current foster home was "very loving and caring" and that the home was "safe and stable". She noted that the foster parents "take the children places and nurture them." (T. III. at 8). She stated that the children have also bonded with the foster parent's two biological children. Id. She stated that they meet all of the children's needs. She further stated with certainty that the foster

family was interested in adopting the children. She went on to state that placement with relatives was either unavailable or inappropriate. She explained that they had excluded the maternal grandmother, Tavy Reynolds, due to her lengthy history with the agency and her own children being in and out of the foster care system. (T. III at 9). She stated that they also reviewed the children's paternal grandmother, Holiday Trevares, but that she failed to follow through with all of the necessary drug testing. (T. III. at 11-12). The Department also had concerns about Ms. Trevares' health as she has severe pain from rheumatoid arthritis and had previously informed the Department that she was unable to take custody of a different child because her nerves were too bad. (T. III. at 11). She also noted that Ms. Trevares had only met the youngest child for the first time three weeks before the hearing. (T. III. at 13).

**{¶18}** A paternal aunt, Lori Mansfield, was also excluded due to a child endangering charge. Ms. Mansfield's daughter Britteny was also ruled out because she was only able to take one child. (T. III. at 13).

**{¶19}** Eggenschwiler expressed her belief it was in the children's best interest to grant permanent custody to the Department. She stated that the children are very bonded with their foster family but she has observed no bond with the Mother and these children. (T. III. at 18).

**{¶20}** MaryAnn McWhorter, the guardian ad litem, also testified in this matter, in addition to filing a written Report and Recommendation, in which she recommended permanent custody of the children be given to the Department. During her testimony she stated that the Mother had failed to show improvement over the two years that the case had been going on, and that she felt that the Mother was overwhelmed by the

children. (T. II. at 50). She further stated that over that two-year period, the Mother had repeatedly been untruthful. (T. II. at 54).

{¶21} By Judgment Entry dated August 18, 2009, the trial court terminated Parents' parental rights, privileges and obligations, and granted permanent custody of the children to the Department. The trial court issued Findings of Fact and Conclusions of Law on the same day.

{¶22} Appellant-Mother now appeals.

{¶23} Initially, we must begin by noting that Appellant has failed to comply with App.R. 16 and Local App.R. 9.

{¶24} App.R. 16(A) provides: The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶25} (1) A table of contents, with page references.

{¶26} (2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶27} (3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶28} (4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶29} (5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶30} (6) A statement of the facts relevant to the assignments of error presented for review, with appropriate references to the record \* \* \*

{¶31} (7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶32} (8) A conclusion briefly stating the precise relief sought.

{¶33} Appellant's brief does not satisfy the requirements of App.R. 16 and Local R. 9 in any of the above respects, not the least of which it does not present this Court with a stated assignment of error. Such deficiency is tantamount to the failure to file a brief. Although this Court has the authority under App.R. 18(C) to dismiss an appeal for failure to file a brief, we shall not do so here. While Appellant did not present assignments of error in accordance with App.R. 16(A), upon review of Appellant's Brief, it would appear that Appellant seeks this Court to find that it was not in the best interests of the minor children to be placed with SCDJFS and that the children should have been reunited with Appellant.

{¶34} As this Court has previously addressed this argument in related case *In the matter of T.R, P.R., D.R.*, Stark App.No. 2009 CA 00235, we shall incorporate and reiterate our Opinion in such case herein.

{¶35} 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* (Feb. 10, 1982), Stark App. No. CA5758. 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, 376 N.E.2d 578.

**{¶36}** R.C. §2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing, and provide notice, upon filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

**{¶37}** Following the hearing, R.C. §2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply:

**{¶38}** “(a) the child is not abandoned or orphaned, 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;

**{¶39}** “(b) the child is abandoned;

**{¶40}** “(c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or

**{¶41}** “(d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.”

**{¶42}** In determining the best interest of the child at a permanent custody hearing, R.C. §2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following:

{¶43} “(1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child;

{¶44} “(2) 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;

{¶45} “(3) the custodial history of the child; and

{¶46} “(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.”

{¶47} Therefore, R.C. §2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. §2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶48} If the child is not abandoned or orphaned, then the focus turns to whether the child can be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. §2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R.C. §2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶49} In the case sub judice, the trial court found that the minor children had been in the temporary custody of the agency for 12 or more of the past consecutive 22 months, and the children could not be placed with Appellant within a reasonable time.

Those findings are alternate findings under R.C. § 2151.414(B)(1), R.C. § 2151.414(B)(1)(d) and (a), respectively. Either of those findings, if supported by the evidence, would have been sufficient, in and of itself, to base a grant of permanent custody pursuant to R.C. § 2151 .414(B)(1).

{¶50} Appellant does not appeal the trial court's finding that the children had been in the temporary custody of the Department for 12 or more of the past consecutive 22 months. Again, such a finding is enough to satisfy the requirements of R.C. § 2151.414(B)(1). See *In re: Whipple Children*, Stark App.No. 2002CA00406, 2003-Ohio-1101. However, because the trial court made a finding that the children could not be placed with Appellant within a reasonable time, we shall review such finding.

{¶51} As set forth in our Statement of the Facts and Case, the children were initially removed after the Department received a referral due to the deplorable home conditions and the living arrangements of the children. The case plan required Appellant-Mother, among other things, to obtain and maintain appropriate housing and employment. During the course of the proceedings, Appellant failed to meet these objectives.

{¶52} During the best interest portion of the hearing, the ongoing caseworker testified that the children were bonded with their foster family, that the foster family provided a very stable, safe and nurturing home for the children, and that the foster parents wanted to pursue adoption.

{¶53} Based upon the foregoing and the entire record in this matter, we find the trial court's findings that it was in the best interest of the children to grant permanent custody to the Department are supported by clear and convincing evidence.

{¶54} Appellant's assignment of error is overruled.

{¶55} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE\_\_\_\_\_

/S/ W. SCOTT GWIN\_\_\_\_\_

/S/ SHEILA G. FARMER\_\_\_\_\_

JUDGES

JWW/d 0203

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
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JUDGMENT ENTRY

Case No. 2009 CA 00236

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

Costs assessed to Appellant.

/S/ JOHN W. WISE \_\_\_\_\_

/S/ W. SCOTT GWIN \_\_\_\_\_

/S/ SHEILA G. FARMER \_\_\_\_\_

JUDGES