

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: : JUDGES:  
 : Julie A. Edwards, P.J.  
 : William B. Hoffman, J.  
 S.B. : Patricia A. Delaney, J.  
 :  
 : Case No. 2010CA00232  
 :  
 :  
 : OPINION

CHARACTER OF PROCEEDING: Civil Appeal from Stark County  
Court of Common Pleas, Family  
Court Division, Case No.  
2009JCV00046

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 21, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Edwards, P.J.*

{¶1} Appellant, Nikki Woods, appeals a judgment of the Stark County Common Pleas Court, Family Court Division, awarding permanent custody of her minor daughter, S.B., to appellee Stark County Department of Job and Family Services (SCDJFS).

#### STATEMENT OF FACTS AND CASE

{¶2} S.B. was born on February 29, 2008. The child was born prematurely with underdeveloped lungs and as a result, has extreme medical problems. She requires oxygen at least 10 hours a day and utilizes a feeding tube and tracheotomy.

{¶3} S.B. has been in the custody of appellee since October 21, 2008. Appellee had taken custody of the child when appellant and the child's natural father, who is not a party to this appeal, failed to complete medical training necessary to care for the child. The original case was dismissed when it could not be tried within the statutory time period due to the court's discovery that counsel for appellant had a conflict of interest.

{¶4} As a result, the first case was dismissed and on January 15, 2009, appellee filed a new complaint alleging that S.B. was a dependent child. On March 23, 2009, temporary custody of S.B. was awarded to appellee.

{¶5} Appellant completed a portion of her case plan. She completed a parenting assessment and a drug/alcohol assessment. She has never tested positive for drug use and the recommendation was that she did not need treatment for drug or alcohol use. She visited the child regularly. However, appellant failed to complete the medical training necessary to care for S.B.'s extreme medical needs.

{¶6} Following S.B.'s birth, appellant attended an introductory session of training but failed to appear thereafter. While appellant claimed she completed training at University Hospital, personnel at the hospital indicated that appellant did not complete training at their facility. Appellant's caseworker then arranged for SCDJFS to pay for a registered nurse to provide the training to appellant. Appellant failed to contact the nurse to initiate training during the time period permitted by the agency's funding approval. The caseworker arranged for an extension of time for training through this program, but appellant again failed to meet with the nurse.

{¶7} S.B. has been in the same foster home during the pendency of the case. The foster mother is a registered nurse and both foster parents completed training to care for S.B.'s medical needs. They completed pre-adoption training and desire to adopt S.B.

{¶8} Following trial, the court terminated appellant's parental rights and granted permanent custody of the child to appellee. Appellant assigns a single error:

{¶9} "THE JUDGMENT OF THE TRIAL COURT THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

{¶10} A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the

extent of such certainty, as required beyond a reasonable doubt, as in criminal cases.” *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118; *In re: Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 481 N.E.2d 613.

{¶11} In reviewing whether the trial court based its decision upon clear and convincing evidence, “a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54, 60; See also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. If the trial court's judgment is “supported by some competent, credible evidence going to all the essential elements of the case,” a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74, 564 N.E.2d 54.

{¶12} Moreover, “an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law.” *Id.* Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273:

{¶13} “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.”

{¶14} Moreover, deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much evident in the parties' demeanor and

attitude that does not translate to the record well.” *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 419, 674 N.E.2d 1159; see, also, *In re: Christian*, Athens App. No. 04CA10, 2004-Ohio-3146; *In re: C. W.*, Montgomery App. No. 20140, 2004-Ohio-2040.

{¶15} Pursuant to 2152.414(B)(1), the court may grant permanent custody of a child to the movant if the court determines “that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that any of the following apply:

{¶16} “(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 period of time or should not be placed with the child's parents.....

{¶17} “(d) The child has been in the temporary custody of one or more public children services agencies...for twelve or more months of a consecutive twenty-two month period....”

{¶18} 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: (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; (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; (3) the custodial history of the child; and (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.

{¶19} The trial court found that the child had been in the temporary custody of appellee for twelve or more months of a twenty-two month period. Appellant does not challenge this finding.

{¶20} In the instant case, the evidence presented at the best interest portion of the hearing reflects the appellant failed to complete medical training necessary to care for the child's extensive needs, despite having four opportunities to do so. While she visited the child and had a bond with the child, the child had a stronger bond with the foster family. S.B. has been in the same foster home during the pendency of the case. The foster mother is a registered nurse and both foster parents completed training to care for her medical needs. They completed pre-adoption training and desire to adopt S.B. The guardian ad litem, who is herself a registered nurse, met with S.B.'s medical providers and expressed serious concerns about appellant's ability to meet the child's medical needs. She noted several examples of appellant's inability to properly attend to the medical tubes and equipment necessitated by the child's medical needs and expressed concerns about the safety of S.B. in appellant's care.

{¶21} The finding that permanent custody was in the child's best interest is not against the manifest weight or sufficiency of the evidence.

{¶22} The assignment of error is overruled.

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

By: Edwards, P.J.

Hoffman, J. and

Delaney, J. concur

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JUDGES

JAE/r1118

