

[Cite as *In re A.M.*, 2010-Ohio-6141.]

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: A.M.

JUDGES:

Hon. William B. Hoffman, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 10 CA 15

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Juvenile Division, Case No. 08 NO
15

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 14, 2010

APPEARANCES:

For Appellee HCCS

For Appellant Mother

SEAN M. WARNER
ASSISTANT PROSECUTOR
164 East Jackson Street
Millersburg, Ohio 44654

CHRISTINA I. SMITH
88 South Monroe Street
Millersburg, Ohio 44654

Wise, J.

{¶1} Appellant-mother Dawn Shamp appeals the decision of the Holmes County Court of Common Pleas, Juvenile Division, granting permanent custody of her daughter, A.M., to Appellee Holmes County Department of Job and Family Services, Children Services Division (“HCCS”). The relevant facts leading to this appeal are as follows.

{¶2} Appellant gave birth to A.M. in November 2007. Joshua Moore has been designated as A.M.’s father.¹ Both mother and child tested positive for marijuana at the time of birth. HCCS initially became involved on a non-court basis; however, the agency was compelled to file an abuse/dependency complaint in the trial court on January 15, 2008. In addition to the concerns of illegal drug use by both parents, HCCS developed concerns of domestic violence in the parental relationship and additional alleged criminal activity.

{¶3} Appellant thereafter stipulated to a finding of abuse and dependency concerning A.M.

{¶4} On December 15, 2009, HCCS filed a motion for permanent custody. The matter proceeded to evidentiary hearings on March 5, 2010 and April 9, 2010. The trial court issued a judgment entry on July 2, 2010, granting permanent custody of A.M. to the agency.

{¶5} On July 29, 2010, appellant filed a notice of appeal. She herein raises the following sole Assignment of Error:

¹ Moore has filed a separate appeal under case number 10-CA-16. An analysis of the permanent custody issues regarding him will be addressed in a companion opinion.

I. THE TRIAL [COURT] ERRED BY GRANTING PERMANENT CUSTODY TO HCCS WHEN IT FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT PERMANENT CUSTODY WAS IN THE BEST INTEREST OF A.M.

I.

{¶6} In her sole Assignment of Error, appellant contends the trial court erred in concluding that granting permanent custody of A.M. to the agency was in the child's best interest. We disagree.

{¶7} As an initial matter, we note appellant does not challenge the trial court's application of the "twelve of twenty-two" rule (see R.C. 2151.414(B)(1)(d)), based on A.M. being in agency temporary custody for the requisite number of months. Accordingly, we will directly proceed to an analysis of the best interest issue. See, e.g., *In re Walton/Fortson Children*, Stark App.No. 2007CA00200, 2007-Ohio-5819, ¶ 14; *In re T.S.*, Franklin App.Nos. 07AP-624, 07AP-625, 2007-Ohio-6645, ¶ 8-¶ 9.

{¶8} In determining the best interest of a child for purposes of a permanent custody disposition, the trial court is required to consider the factors contained in R.C. 2151.414(D). These factors are as follows:

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

{¶10} "(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;

{¶11} "(3) 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 * * *;

{¶12} “(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;

{¶13} “(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.”

{¶14} As an appellate court, 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. 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, 376 N.E.2d 578. It is well-established that the trial court is in the best position to determine the credibility of witnesses. See, e.g., *In re Brown*, Summit App.No. 21004, 2002-Ohio-3405, ¶ 9, citing *State v. DeHass* (1967), 10 Ohio St .2d 230, 227 N.E.2d 212. Furthermore, “[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.” *In re Mauzy Children* (Nov. 13, 2000), Stark App.No. 2000CA00244, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316, 642 N.E.2d 424.

{¶15} In the case sub judice, the trial court heard, inter alia, the testimony of psychologist Marianne Bowden, Ph.D., who completed a detailed evaluation of appellant and her situation. Dr. Bowden has been in practice more than twenty years and has conducted well over 2,000 psychological evaluations in her career. She has diagnosed appellant with major depressive disorder, severe adjustment disorder with anxiety, polysubstance abuse, and dependent personality disorder with borderline and avoidant features. Regarding parenting issues, Dr. Bowden opined in part as follows:

{¶16} “Ms. Shamp appears to have a shallow attachment to her children. She is experiencing many stressors both within and outside of the parent/child relationship. These factors add significantly to her burden to increase the likelihood of dysfunctional parenting. Ms. Shamp’s responses on the CAPI indicate a valid profile. Her responses indicate that she is at a high risk of abuse to a child.

{¶17} “* * *

{¶18} “Unfortunately Ms. Shamp’s history shows that her personality disorder is severe. She has admitted that she cannot function without being in a relationship with Mr. Moore. Therefore, Ms. Shamp’s children are at considerable risk.” Bowden Report at 6, 8.

{¶19} The agency also called as witnesses Philip Heagerty (social worker for Melymbrosia Associates), Tamara Sabo (chemical dependency counselor), Nancy Fridley (home-based services counselor), Joseph Messner (mental health therapist and drug/alcohol counselor), Jeff Mellor (probation officer), and Alisha Keller (HCCS case manager). Furthermore, HCCS case manager Emily Ayers testified that appellant has had at least seven (and perhaps as many as ten) residences during the pendency of the

case, despite various direct and indirect forms of assistance provided via HCCS. Appellant has been incarcerated three times during that period as well, and was facing recent felony charges for attempting to obtain prescription medication by deception. Appellant has held at least five or six jobs during the 2008 to 2010 period, but at the time of the evidentiary hearing, no current employment was documented either by HCCS or appellant herself.

{¶20} HCCS also portrayed the child's relationships with her parents, siblings, and foster care givers. A.M. has two sisters, one of whom, age twelve, resides with appellant's mother. Because A.M. was placed in temporary agency custody when she was just eight months old, she has had a minimal relationship with her sisters, although she has had some supervised visitation with the twelve-year-old. On the other hand, according to the G.A.L. report of January 6, 2010, A.M. has been in the same foster family since the early stages of the case and appears to be "quite happy and doing well" in the foster home, where she has developed a "very strong" bond. The G.A.L. report recommended a grant of permanent custody to the agency.

{¶21} Appellant essentially argues that, particularly in the seven months prior to the evidentiary hearing date, she has improved her housing situation, made progress in her counseling, voluntarily entered a life skills program, regularly visited with A.M. under supervision, and has avoided further abusive encounters with A.M.'s father. She also challenges Dr. Bowden's recommendations on the basis that her evaluations were approximately ten months old at the time of trial. However, upon review of the record and the detailed findings of fact and conclusions of law therein, we find no basis to overturn the decision of the trier of fact, and we conclude the grant of permanent

custody of A.M. was made in the consideration of the child's best interests and did not constitute an error or an abuse of discretion.

{¶22} Appellant's sole Assignment of Error is therefore overruled.

{¶23} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Juvenile Division, Holmes County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JUDGES

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

IN RE: A.M.

:
:
:

JUDGMENT ENTRY

Case No. 10 CA 15

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

Costs assessed to appellant.

JUDGES