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CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Fifth District, Guernsey County.
STATE OF OHIO-CHILDREN SERVICES BOARD. Plaintiff-Appellee,
v.
James McTHENY, Defendant-Appellant.
No. 99-CA-13.
Dec. 15, 1999.

Civil Appeal from Guernsey County, Court of Common Pleas, Case No. C980494.
Kent D. Bigler , Representing Guernsey Co. Children Services Board, and Andrew J. Warhola ,
Cambridge, OH, Guardian Ad Litem, for Plaintiff-Appellee.

Frank A. McClure , Cambridge, OH, for Defendant-Appellant.

GWIN , P.J., FARMER , and EDWARDS , JJ.

OPINION

EDWARDS .

*1 Appellant James McTheny appeals from the April 13, 1999, Journal Entry of the Guernsey County Court of Common Pleas, Juvenile Division, granting permanent custody of James, Brandon, and Mark McTheny to the Guernsey County Children Services Board and terminating appellant's parental rights.

STATEMENT OF THE FACTS AND CASE

Appellant James McTheny and Amy McTheny are the biological parents of James McTheny, date of birth December 18, 1995, Brandon McTheny, date of birth July 19, 1997, and Mark McTheny, date of birth June 24, 1998. On June 18, 1998, the Guernsey County Children Services Board filed a complaint in the Guernsey County Court of Common Pleas, Juvenile Division, alleging that James McTheny, Jr. and Brandon McTheny were neglected/dependent children. The Guernsey County Children Services Board, in its complaint, specifically requested that the Court "inquire into the alleged neglect/dependency of said children, and grant a disposition of legal custody to Harold and Martha McTheny, with protective supervision provided by Guernsey County Children Services Board, or alternatively, grant a disposition of temporary custody to Guernsey County Children Services Board." Harold and Martha McTheny are appellant's parents and the children's paternal grandparents. At the time the complaint was filed, both James and Brandon were residing with their parental grandparents.

Pursuant to a Journal Entry filed on June 26, 1998, the trial court issued an ex parte order of custody of

Mark Allen McTheny, to the Guernsey County Children Services Board effective June 26, 1998. The court, in its entry, found that there was "probable cause to believe that the child may be in danger due to the substance abuse and history of domestic violence by both parents." Thereafter, on July 1, 1998, the Guernsey County Children Services Board filed a complaint alleging that Mark McTheny appeared to be a neglected/abused/dependent child as defined in Sections 2151.03, 2151.031, and 2151.04 of the Revised Code. The Guernsey County Children Services Board, in its complaint, alleged that Mark Allen McTheny lacked proper parental care because of the faults or habits of his parents, suffered physical or mental injury that harmed or threatened his health because of the acts or omissions of his parents, and lacked adequate parental care by reason of the mental or physical condition of his parents. As evidenced by a Journal Entry filed on July 8, 1998, the trial court found probable cause to believe that Mark Allen McTheny was a dependent/neglected child. For such reason, the trial court granted temporary custody of Mark Allen McTheny to Harold and Martha McTheny, his paternal grandparents. In addition, the trial court ordered that the Children Services Board provide protective supervision for Mark. Pursuant to a Journal Entry filed on July 8, 1998, the case of James McTheny, Jr. and Brandon McTheny and the case of Mark Allen McTheny were combined.

An amended complaint was filed by the Guernsey County Children Services Board on September 8, 1998, alleging that James McTheny, Jr., Brandon McTheny and Mark McTheny appeared to be neglected/dependent children as defined in Sections 2151.03 and 2151.04 of the Revised Code. The Children Services Board, in its amended complaint, specifically alleged, in part, that the three children lacked proper parental care because of the faults or habits of their parents, and lacked adequate parental care by reason of the physical condition of their parents. Following adjudicatory and dispositional hearings held on September 11, 1998, the trial court, pursuant to a Journal Entry filed on September 18, 1998, found that the three children were dependent children. For such reason, the trial court granted temporary custody of the three children to their paternal grandparents, Martha and Harold McTheny, and ordered that appellant and Amy McTheny comply with the conditions of a case plan which was filed in the court by the Guernsey County Children Services Board.

*2 A Motion for Further Dispositional Orders was filed by the Guernsey County Children Services Board on December 7, 1998. The Children Services Board requested that the trial court modify the current disposition of temporary custody and grant permanent custody of James, Brandon and Mark McTheny to the Guernsey County Children Services Board for purposes of adoption. The Children Services Board specifically alleged in its motion as follows:

"1. On September 9, 1998, at the Adjudication/Dispositional Hearing, Amy and James McTheny stated that they were no longer together as a couple. That evening, Amy and James McTheny were out drinking together and James McTheny was arrested for domestic violence against Amy McTheny and assault. James McTheny has been incarcerated since that date.

2. It was the understanding of Guernsey County Children Services that Amy and James McTheny were to follow the case plan filed July 28, 1998 (implemented voluntarily on March 5, 1998), for 30 days then an amended case plan, including the Diversion Team would be filed in court. James McTheny has been in jail since that time, consequently, has not followed through with the case plan objectives. Amy McTheny was discharged from Guernsey Health Choices for non-compliance and has made little or no progress in counseling at Guernsey Counseling Center.

3. Martha and Harold McTheny, paternal grandparents, reported to Guernsey County Children Services on November 2, 1998, that they would no longer be able to care for the children and are requesting that Guernsey County Children Services Board place them in foster care.