

the court that he wanted custody so he could turn his son over to his family, specifically his sister.” The magistrate suggested to Wathen that his sister should file a custody petition.

In March 2004, Wathen filed a motion for visitation. Following a hearing on the motion, a magistrate noted that Wathen lived in an efficiency apartment and would need to seek appropriate housing. The magistrate stated, “There remains a question as to whether or not Mr. Wathen is maintaining a relationship with * * * [Kain’s] biological mother, that would place [Kain] at risk.” Kain’s mother had a history of using crack cocaine.

Wathen filed a motion for contempt against Cotton, alleging that she had been denying him visitation with Kain. In June 2005, at a hearing before a magistrate, Wathen said that he had moved to Louisville, Kentucky, and that he might want to pursue legal custody. The magistrate noted that Wathen “had chosen not to visit with Kain,” so the contempt motion was withdrawn.

In May 2006, JFS filed a motion for interim custody of Kain, who was then ten years old. Neither Wathen nor Kain’s mother appeared at a hearing on the motion. Evidence presented at that time indicated that Kain had been living with a family friend since the previous summer. Cotton had asked that Kain be removed from her care because he had engaged in “sexualized behavior,” had cut the tail off a dog, and had set fires in her home.

In September 2006, the juvenile court determined that Kain was a dependent and neglected child, and Wathen agreed that temporary custody should be granted to JFS. At that time, a juvenile court magistrate noted that Wathen was “not seeking custody [of Kain] but rather placement with relatives in Louisville.”

In May 2007, Kain’s guardian ad litem (“GAL”) reported that Wathen did not have stable housing and did not visit regularly with Kain “because he was unable to find a

suitable location for visits to occur.” Moreover, Kain had not expressed a desire to return to either of his parents.

In October 2007, a juvenile court magistrate noted that Wathen’s visits with Kain were not going well. The magistrate stated, “[T]here is little interaction and little connection between Kain and his father. However, Kain reports to wanting to live with his father. This may be just to get out of foster care.”

In January 2008, the juvenile court extended temporary custody to JFS. A magistrate noted that Kain was then 12 years old, and that he had been in agency care for 618 days. Wathen continued to have difficulty finding housing and had been staying with a brother. Kain expressed doubt that Wathen would ever be able to care for him. Kain was concerned that he would have to care for Wathen.

In April 2008, the GAL reported that Wathen was no longer visiting with Kain, and that he had neither stable housing nor stable income. According to the GAL, “Kain is excited about the possibility of being adopted and living with a family.” The GAL recommended that JFS be awarded permanent custody.

Following a hearing in December 2008, the juvenile court awarded permanent custody of Kain to JFS.

In his first assignment of error, Wathen argues that the juvenile court erred by granting permanent custody to JFS. Wathen contends that the court’s determination that the award was in the child’s best interest was against the weight of the evidence. He also contends that the evidence was insufficient to determine that JFS had made reasonable reunification efforts or that the child could not be placed with him within a reasonable time.

In this case, there was ample evidence to support the juvenile court’s judgment. In determining that a grant of permanent custody to JFS was in Kain’s best interest, the court

considered his limited interaction with Wathen, his repeatedly stated wish to be adopted, and his having been in JFS custody for two years, as well as his need for a secure placement.

In determining that Kain could not be placed with Wathen within a reasonable time, the court considered that Wathen had demonstrated a lack of commitment toward Kain by failing to regularly support or visit him. Wathen had lived in Kentucky with family members, or in efficiency apartments, or at the racetracks where he was employed. Wathen's visits with Kain were not consistent; he had not seen Kain for over a year at one point. Although JFS had provided bus tickets for Wathen so that he could travel from Louisville to Cincinnati for his visits with Kain, Wathen had, in several instances, failed to pick up the tickets.

Wathen had provided no financial support for Kain. He lacked a stable income. He had no insight into Kain's emotional and behavioral issues and treatment. In the years that Kain was in JFS custody, Wathen had failed to take advantage of services offered to help him with reunification.

After reviewing the record, we hold that clear and convincing evidence supported the trial court's decision to grant permanent custody of Kain to JFS.² Accordingly, we overrule the first assignment of error.

In his second assignment of error, Wathen argues that the trial court erred by failing to appoint counsel for Kain. Because Kain did not express a consistent wish for placement contrary to the recommendation of his GAL, it was not necessary for the trial court to appoint independent counsel for him.³ Consequently, we overrule the second assignment of error and affirm the trial court's judgment.

² R.C. 2151.414(B).

³ *In re Graham*, 167 Ohio App.3d 284, 2006-Ohio-3170, 854 N.E.2d 1126.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 17, 2009

per order of the Court _____.

Presiding Judge

