ORIGINAL

07-1637

Appendix A Notice of Appeal from a court of Appeals
In the Supreme court of Ohio

Rayann Craig + Allan Craig	: On Appeal from
Appellants,	: Tuscarawas Country, Ohio
v.	: Fifth Appellate
J.C.J.F.S.	: District Court of Appeals
Appellees,	: Court of Appeals No.
	: 2007 A.P. 030017

Notice of Appeal of Appellants
Rayann Craig + Allan Craig

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FILED
AUG 30 2007
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
AUG 30 2007
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal of Appellants Rayann Craig + Allan Craig

Appellants Rayann Craig + Allan Craig hereby gives notice of Appeal to the Supreme Court of Ohio from the judgment of Tuscarawas Country, Ohio Fifth Appellate District entered in Court of Appeals case No. 2007 A.P. 03 0017 on July 19, 2007.

This case is on that involves termination of parental rights + is a public or great general interest.

Respectfully submitted
Rayann Craig + Allan Craig
Rayann Craig
counsel for Appellants

Ceritificate of service

We certify that a copy of this notice of appeal was sent by ordinary U.S. mail to counsel for appellees, David Haverfield 389 16th Street S.W. New Phila Ohio 44663 on August 2007.

Rayann Craig + Allan Craig
Rayann Craig Allan Craig
counsel for Appellants

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Ohio Fifth Appellate District
(July 19, 2007) A.

Judgment of Tuscarawas County
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(Feb. 25, 2007)

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County court C
(Jan. 25, 2007)

Explanation of why this is a case of public or great general interest + involves the termination of parental rights

This case is a case of great general interest, because in 2006 the Fifth District overruled a case ~~same~~ which was almost the same as ours. It was case No. 2006 Ohio 4906, In re Turner children, ~~and~~ Another reason is when our son Zakyia was born the children services didn't have a court order to get our son, so the case worker sent a letter telling Autman to keep him, until they could get a hold of the court.

Statement of the case + facts

Rayann + Allan Craig are the biological parents of Zakyia Craig date of birth Dec. 23, 2006. He was removed from our custody + placed into temp. custody of J. C. f. F. S. at birth. Then on Dec. 27, 2006 trial court determined that he should be placed in substitute care. Complaint was filed on Dec. 27, 2006 alleging Zakyia to be dependent + based upon removal + granting P.C. of parents older children. That case Nos. are 2004 g N00503 + 05 g N00688. J.C.f.F.S alleged that Rayann + Allan failed to alleviate the concerns which led to finding of dependency + neglect + failed to engag in case plan services, resulting in the court granting P.C. of all five children to J.C.f.F.S. The case plan wasn't a reunification plan. On January 23, 2007 a adjudicatory hearing was held + they found him to be dependent. On February 13, 2007, J.C.f.F.S. filed motion with court for hearing to determine need for agency to expend reasonable ~~the~~ efforts to reunify us. On Feb. 20, 2007 the court found

reasonable efforts to reunify pursant to R.C. 2151.419. They also found that he shouldn't + can't be placed with any parent within reasonable time pursuant to 2151.414(E) + (D) + it was his best interest to be placed in P.C. of J.C.F.S. They also stated that we did nothing, which is a lie, also she stated that allan wouldn't sign release forms.

Proposition of Law No 1

The trial court's decision in finding Zakyia Craig to be dependent child pursuant to O.R.C. 2151.04(D) + the decision to terminate the appellants parental rights + granting P.C. to J.C.F.S. is against the manifest weight of evidence + not supported by clear + convincing evidence pursuant to R.C. 2151.414 + used in determining that job + family services wasn't required to expend reasonable efforts at reunification before granting P.C.

Under the U.S. ~~Constitution~~ Constitution, parents have protected fundamental interest in care, custody, + management of their children. The Supreme Court of

essential + basic rights of parent to raise child. A parents right to raise his children is an essential + basic civil right. Parents have fundamental liberty interest in care, custody + upbringing of their children. Permanent termination of parental rights has been described as the family law equivalent of death penalty in criminal case. P.C. determinations made under R.C. 2151.414 must be supported by clear + convincing evidence. It's intermediate, being more than a mere preponderance, but not to extent of such certainty as required beyond reasonable doubt as criminal cases. If a parent has ever had child involuntarily removed, a subsequently born child may be automatically deemed dependent from birth. A prior adjudication of P.C., however, simply shouldn't + doesn't constitute a de facto termination of parental rights as a latter born child. To allow such outcome would amount a ~~a~~ violation of parents basic right to raise their children. Guidelines for P.C. hearing + determination the trial court must make are set out

consider all relevant factors, including but not limited to those in R.C. 2151.414(D.) There was evidence presented at adjudicatory + dispositional hearings which revealed J.C.S. F.S. didn't conduct any investigation into parents fitness when they removed Zakyia from custody. While 2151.419(A)(2)(E) provides that parents who previously has parental rights involuntarily terminated with respect to sibling of child, the court is mandated to make determination that agency is not required to make prevent removal of child from child's home. The caseworker testified that she has not been to our house since in about August of 2005, which was over one year before Zakyia was born + she never made any contact with us since the removal of our case in 05. As to the allegations of domestic violence + sexual abuse the caseworker testified that charges were never filed. In fact she stated the the sexual abuse allegations was a one time investigation, which the allegations were ~~to~~ found to be unsubstantiated. She also testifed the request ~~w~~ of P.C. was based on information from two, three years ago. There were

recent investigation by agency on which court could base its decision that Zakyia was dependent under R.C. 2151.04 (D) She also testifed that the agency dropped their sexual abuse ~~in~~ investigation.

Conclusion

For the reason discussed above this case involves matters of public + great general interest + the termination of parental rights. The appellants requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,
Rayann Craig + Allen Craig
Rayann Craig Allen Craig

Certificate of service

We certify that a copy of this memorandum in support of jurisdiction was sent by ordinary U.S. mail to counsel for appellee, David Haverfield 389 16th Street N.W. New Phila OH 44663. on August , 2007.

Rayann Craig + Allen Craig

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

LAKYIA CRAIG

RECEIVED
JUL 20 2007

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Julie A. Edwards, J.
Hon. Patricia A. Delaney, J.

Case No. 2007 AP 03 0017

OPINION

CHARACTER OF PROCEEDING: Appeal from the Tuscarawas County Court of Common Pleas, Juvenile Division, Case No. 06 JN 00662

JUDGMENT: Affirmed.

FILED
5th District Court of Appeals
Tuscarawas Co., Ohio

DATE OF JUDGMENT ENTRY:

JUL 19 2007
ROCKNE W. CLARKE
Clerk of Courts

APPEARANCES:

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Appendix A

Edwards, J.

{¶1} Appellants, Mother-Rayann Craig and Father-Allan Craig, filed this joint appeal from the judgment entered in the Tuscarawas County Court of Common Pleas, Juvenile Court Division, which terminated all parental rights, privileges and responsibilities of the parents, with regard to their minor child, Lakyia Craig, and ordered that permanent custody of the minor child be granted to the Tuscarawas County Department of Job and Family Services, (hereinafter, "TCJFS").

{¶2} This appeal is expedited, and is being considered pursuant to App.R.11.2(C). The relevant facts leading to this appeal are as follows:

STATEMENT OF THE FACTS AND CASE

{¶3} This appeal pertains to the permanent custody disposition of Lakyia Craig, whose date of birth is December 23, 2006. Appellant, Rayann Craig, is the natural mother of the child. Allan Craig is the natural father.

{¶4} The minor child has five siblings who have previously been ordered into the permanent custody of TCJFS. The siblings are Jazmine Loyd Irwin, whose date of birth is January 21, 1999, George Irwin, whose date of birth is February 15, 2001, Rebecca Craig, whose date of birth is July 29, 2002, Allan Craig, Jr., whose date of birth is July 6, 2003, and Lakota Craig, whose date of birth is, December 5, 2005. Rayann Craig is the natural mother of all the siblings. Allan Craig is the natural father of Rebecca, Allan Jr., and Lakota.

{¶5} TCJFS has been involved with this family since 2002. On or about July 27, 2004, in Tuscarawas County Court of Common Pleas, Juvenile Division Case Number 04JN00503, TCJFS filed a complaint for abuse, neglect and dependency for Jazmine,

George, Rebecca and Allan Jr. The concerns which led to the filing included domestic violence, allegations of sexual abuse, failure to provide for the children's basic needs and an unsafe home environment.

{¶6} On October 13, 2004, the four siblings were adjudicated to be neglected and dependent. Both appellants, Rayann and Allan Craig, were provided with a case plan for reunification. The case plan required them to complete a psychological evaluation and any recommended treatment, participate in parent education classes, and maintain a stable and safe home environment. Allan Craig was further ordered to complete anger management treatment and confrontative therapy. The appellants failed to satisfactorily complete any part of their case plan.

{¶7} During the pendency of the matter involving the four siblings, Barbara Jean Hunter of Personal & Family Counseling's "Help Me Grow" program, made visits to the Craig home. Ms. Hunter expressed ongoing concerns about the condition of the home, the inappropriate discipline of the children and the mental health issues of the parents.[1] After a hearing, on October 31, 2005, the Tuscarawas County Court of Common Pleas granted permanent custody of Jazmine, George, Rebecca and Allen Jr. to TCJFS.

{¶8} In the permanent custody decision the trial court found that the Craig family history was "fraught with examples of constant neglect". The home was "inadequate and filthy" and the children were "underweight and otherwise physically neglected". The court further stated that, "The general physical handling of these small children was rough and inappropriate", and that there had been allegations of sexual

[1] See paragraph 29 of the Findings of Fact of the trial court's judgment entry adjudicating the children to be neglected and dependent in Tuscarawas County Court of Common Pleas, Juvenile Division Case Number 04JN00503, filed October 13, 2004. (State's Exhibit A).

abuse.[2] Additionally the trial court found that the parents lacked any insight into the difficulties that resulted in the removal of the children. The trial court further found Allan Craig to be violent and assaultive, as well as a person, of whom, the children were very fearful. The trial court found Rayann Craig to be intellectually limited and struggling with parenting deficits.[3]

{¶9} After the grant of permanent custody, on December 5, 2005, Lakota Lee Craig was born. TCJFS filed a dependency and permanent custody complaint, and the child was immediately placed in the agency's temporary custody in Tuscarawas County Court of Common Pleas, Juvenile Division, Case Number 05JN00688. The trial court further held that pursuant to R.C. 2151.419(A)(2)(e) TCJFS was not required to expend reasonable efforts to reunify the child with his parents. On February 21, 2006, the trial court found the child to be dependent and ordered the child to be placed into the permanent custody of TCJFS.

{¶10} Thereafter, less than a year later, on December 23, 2006, Lakyia Craig, (the child in the matter on appeal before this Court), was born. On December 24, 2006, the child was placed in the emergency temporary custody of TCJFS. On December 27, 2006, TCJFS filed a complaint seeking a dependency adjudication pursuant to R.C. 2151.04 and requesting a permanent custody disposition pursuant to 2151.353(A)(4).

{¶11} On January 23, 2007, the trial court held the adjudication hearing. At the hearing the ongoing caseworker, Betsy Wanosik, testified that she had been involved

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[2] See paragraph 2 of the Findings of Fact of the trial court's judgment entry ordering the children to be placed in the permanent custody of TCJFS in Tuscarawas County Court of Common Pleas, Juvenile Division Case Number 04JN00503, filed October 31, 2005. (Stipulated Exhibit A)

[3] See paragraphs 5, 6, 9, of the Findings of Fact for the trial court's judgment entry ordering the children to be placed in the permanent custody of TCDJFS in Tuscarawas County Court of Common Pleas, Juvenile Division Case Number 04JN00503, filed October 31, 2005. (Stipulated Exhibit A)

with this family since 2002. She stated that she had been involved with the two prior cases involving the minor child's five siblings.[4] She testified that there have been prior concerns of physical and sexual abuse as well as home safety concerns. She testified that in the initial case, appellants failed to complete any portion of their case plan. Specifically she testified that Rayann completed a psychological evaluation but only attended two counseling sessions. She stated that Allan was belligerent and did not participate in any case plan services. She stated that she had signed the parents up for parenting classes three times, but they had never attended. Essentially, she stated, that in over a one year period of time, the parents had refused to take advantage of any services. She further stated that she had not been provided with any information that the parents had made efforts to pursue services since the five siblings had been placed in permanent custody. The case worker stated that because none of the prior concerns had been alleviated, there were ongoing concerns that Lakyia would be subjected to abuse and neglect if he were returned to the parent's home. On January 24, 2007, by judgment entry, the trial court found the child to be dependent pursuant to R.C. 2151.04.

{¶12} On February 9, 2007, TCJFS moved the Court to remove the case plan requirement that reasonable efforts be expended to reunify. Specifically TCJFS argued that pursuant to R.C. 2151.419(A)(2)(e) reasonable efforts were not required since the parties' parental rights to five other siblings had been previously terminated in Case Numbers 04JN00503 and 05JN00688.

{¶13} On February 20, 2007, the trial court heard the dispositional phase of the dependency complaint, which had requested permanent custody as a disposition. Prior

[4] The five siblings included Jazmine Loyd Irwin , George Irwin, Rebecca Craig, Allan Craig, Jr., and Lakota Lee Craig in Case Numbers 04JN00503 and 05JN00688.

to the presentation of evidence the trial court held that no reasonable efforts needed to be expended to reunify the family. The trial court also admitted, upon stipulation of the parties, certified copies of the trial court's permanent custody orders in Case Numbers 04JN00503 and 05JN00688.

{¶14} Ongoing Caseworker, Betsy Wanosik, again testified that she had been involved with the family in the prior permanent custody cases as well as the current matter before the court. The caseworker reiterated that in the prior case involving Jazmine, Rebecca, George and Allan Jr., appellants had been provided with a case plan and an opportunity to reunify. She stated that appellants failed to complete any of the case plan services and were uncooperative in the agencies attempt to reunify. She stated that the results of the TCJFS investigation in the prior case had found sexual abuse by Allan Craig to be "indicated". She further testified that Lakyia had been placed with a sibling in a foster home and that the foster parents had expressed a desire to adopt the child. She stated that after exhaustive efforts, no relative or other appropriate placement had been available for any of the children. She further stated that it was her opinion that permanent custody was in the child's best interest.

{¶15} On direct examination appellant-Rayann Craig testified that she had completed a psychological evaluation, and had, within the last month, begun counseling at Community Mental Health. She also admitted that she had not completed parenting classes but stated that she had recently contacted the caseworker to inquire about participation. (Transcript of Permanent Custody Proceeding at Pages 80 through 84)

{¶16} Appellant-Allan Craig testified that he had previously been presented with a case plan for reunification in the prior case involving the four siblings. He stated that

he had attended some parenting classes through "Help me Grow". He testified that he understood that long-term counseling had been recommended but further stated that he didn't know "how long, long-term is" and had just started counseling two weeks prior to the dispositional hearing. In regard to anger management he stated that he had discussed anger management with his pastor on two separate occasions and was currently preparing for the tough man competition to curb his anger. On cross-examination he admitted that in the previous case he had not done "whatever it took" to reunify with his children. (Transcript of Permanent Custody Proceeding at Pages 85 through 92).

{¶17} On February 20, 2007, the attorney guardian ad litem filed a report. In the report the guardian stated that a grant of permanent custody to TCJFS was in the child's best interest.

{¶18} On February 23, 2007, via judgment entry, the trial court granted permanent custody of Lakyia Craig to the Tuscarawas County Department of Children's Services. It is from this decision that appellants, Rayann Craig and Allan Craig, now seek to appeal assigning the following error for review:

{¶19} "I. THE TRIAL COURT'S DECISION IN FINDING LAKYIA CRAIG TO BE A DEPENDENT CHILD PURSUANT TO ORC 2151.04(D) AND THE DECISION TO TERMINATE THE APPELLANTS' PARENTAL RIGHTS AND GRANT PERMANENT CUSTODY TO TUSCARAWAS COUNTY JOB AND FAMILY SERVICES IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE PURSUANT TO R.C. 2151.414 AND [THE COURT] ERRED IN DETERMINING THAT JOB AND FAMILY SERVICES WAS NOT

REQUIRED TO EXPEND REASONABLE EFFORTS AT REUNIFICATION BEFORE GRANTING PERMANENT CUSTODY."

I

{¶20} In the Assignment of Error appellants argue that the trial court erred by making a dependency finding, removing the reasonable efforts requirement and granting permanent custody of Lakyia Craig to the Tuscarawas County Department of Job and Family Services. We disagree.

{¶21} "[T]he right to raise a child is an 'essential' and 'basic' civil right." *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169, quoting *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551. A parent's interest in the care, custody and management of his or her child is "fundamental." Id.; *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599. The permanent termination of a parent's rights has been described as, " * * * the family law equivalent to the death penalty in a criminal case." *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45. Therefore, parents "must be afforded every procedural and substantive protection the law allows." Id.

{¶22} An agency may request permanent custody of a child as part of its original abuse, neglect, or dependency complaint. R.C. 2151.353(A)(4). A trial court should only grant permanent custody as the initial disposition in extreme situations where reunification is not possible. *In re Croston* (March 21, 1996), 4th Dist. App. No. 95CA1692, unreported; *In re Smart* (1984), 21 Ohio App. 3d 31, 35, 486 N.E.2d 147.

{¶23} Proceedings involving the termination of parental rights must be bifurcated into separate adjudicatory and dispositional hearings. R.C. 2151.35, Juv.R. 29 and 34.

See also, *In re Baby Girl Baxter* (1985), 17 Ohio St.3d 229, 479 N.E.2d 257. In the adjudicatory phase a child must be found to be abused, neglected or dependent.

{¶24} In pertinent part, R.C. 2151.04(D) defines a dependent child as any child to which both of the following apply: (1) "The child is residing in a household in which a parent, guardian, custodian or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected or dependent child; and (2) who "[B]ecause of the circumstances surrounding the abuse, neglect or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by the parent, guardian, custodian, or member of the household." R.C. 2151.04(D)(1) and (2).

{¶25} "Ohio courts have held that newborn infants can be dependent before they have ever been released into their parents' custody." *In re Pieper Children* (1993), 85 Ohio App.3d 318, 325, 619 N.E.2d 1059, See also, *In re Bishop* (1987), 36 Ohio App.3d 123, 124, 521 N.E.2d 838. Essentially, a prospective finding of dependency is appropriate where a child has not been in the custody of the parents but circumstances demonstrate that to allow the parents to have custody of the child would threaten the child's health and safety. "'A juvenile court should not be forced to experiment with the health and safety of a newborn baby where the state can show, by clear and convincing evidence, that placing the child in such an environment would be threatening to the health and safety of that child.'" *In re Pieper Children* (1993), 85 Ohio App.3d at 325, quoting *In re Campbell* (1983), 13 Ohio App.3d 34, 36, 468 N.E.2d 93, 96.

{¶26} Generally, after an adjudication, and in accordance with R.C. 2151.414, a children services agency prepares and files a case plan. The case plan includes objectives deemed necessary for reunification. However, R.C. 2151.419(A)(2)(e) provides exceptions to this requirement and states that "If any of the following apply, the court shall make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home: ...(e) The parent from whom the child was removed has had parental rights involuntarily terminated pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code with respect to a sibling of the child." R.C. 2151.419(A)(2)(e).

{¶27} Two appellate courts in *In re Sheffey* and *In re Nicholas P.* have found an exception to the R.C. 2151.419(A)(2)(e) mandate. The courts found that R.C. 2151.419(A)(3) states that "At any hearing in which the court determines whether to return a child to the child's home, the court may issue an order that returns the child in situations in which the conditions described in division (A)(2)(a) to (e) of this section are present."

{¶28} Thus, the courts held that the statute provides the trial court with discretion to override the mandate of R.C. 2151.419(A)(2)(e). The court in *Sheffey* specifically stated that "[W]ithout this override provision, any parent who has ever involuntarily lost permanent custody of a child regardless of his or her current fitness and ability to parent, would forever be presumptively denied the benefit of the efforts by the agency to work for reunification or other warranted services. *In re Sheffey,* 167 Ohio App.3d 141,

2006-Ohio-619, 854 N.E.2d 508; See also, *In re Nicholas P.*, Lucas App. No. L-06-1051, 2006-Ohio-6213.

{¶29} Once reunification efforts have either been waived, unsuccessfully completed or exhausted without progress, R.C. 2151.353(A)(4) states in pertinent part that if a child has been adjudicated abused, neglected or dependent, the court may "commit the child to the permanent custody of a public children service agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable period of time or should not be placed with either parent and determines in accordance with division (D) of section 2151.414 [2151.41.4] of the Revised Code that the permanent commitment is in the best interest of the child." R.C. 2151.353(A)(4).

{¶30} With respect to the first requirement, R.C. 2151.414(E) sets forth a list of 16 possible predicate findings. One of those findings must be established prior to a judicial conclusion that a child cannot or should not be placed with the child's parent. R.C. 2151.414(E)(11) states that, in determining whether a child cannot be placed with a parent within a reasonable period of time or should not be placed with a parent, the court shall determine if the following exists: "The parent has had parental rights involuntary terminated pursuant to section or sections 2151.343 or 2151.415 of the Revised Code with respect to a sibling of the child". R.C.2151.414(E)(11).

{¶31} The statute also enumerates certain criteria for evaluating whether permanent custody with a children's services agency is in the child's best interests. R.C. 2151.414(D) requires a court to consider the following factors:

{¶32} "(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;

{¶33} "(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;

{¶34} "(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 ending on or after March 18, 1999;

{¶35} "(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;***"

{¶36} "(5) Whether any of the factors in division (E)(7) to (11) of this section apply in relation to the parents and the child."

{¶37} A trial court's permanent custody finding, which is supported by clear and convincing evidence, will not be overturned as against the manifest weight of the evidence if the record contains competent credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established. *In re S et al.* (1995), 102 Ohio App.3d 338, 344-345, 657 N.E.2d 307; *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118, paragraph three of the syllabus. Additionally, "[e]very reasonable intendment and every reasonable presumption must be made in favor of the judgment

and the finding of facts." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶38} In the case sub judice, the trial court's dependency decision was based upon a finding that TCJFS had been granted permanent custody of five prior born children. The evidence further demonstrated that in the prior cases, the appellants had failed to alleviate concerns of poor hygiene, an unsafe home environment, poor parenting skills and domestic violence. Clearly, the court could find that the nature and circumstances of the appellants' situation would place a newborn at risk. Therefore, pursuant to R.C. 2151.04 the trial court did not abuse its discretion in adjudicating the child dependent.

{¶39} Furthermore, the trial court did not abuse its discretion in granting appellee's R.C. 2151.419(A)(2)(e) motion. The trial court found that in Case Numbers 04JN00503 and 05JN00688 appellants' parental rights had previously been terminated for five of Lakyia's siblings. Certified judgment entries of the permanent custody decisions were submitted as evidence of the termination of appellants' parental rights to Jazmine, George, Rebecca, and Allan Jr. on October 31, 2005 and for Lakota on February 21, 2006. The prior terminations were uncontested.

{¶40} Furthermore, this case can be distinguished from *In re Sheffer and In re Nicholas P.* In both *Sheffer* and *Nicholas P.* the reviewing courts examined the reasons for the prior born child's permanent custody determination. In *Sheffey*, the court found that the prior born child's permanent custody had been granted because the parent was incarcerated and unable to care for the child rather than based upon a finding of unsuitability. In *Nicholas P.* the court found that the parents had made reasonable

efforts but had not completed their case plan prior to the termination proceeding. The court also stated that the evidence further showed that the parents of Nicholas P. voluntarily continued with services and had successfully completed their previous case plan requirements prior to the grant of permanent custody of Nicholas P.

{¶41} In these cases the courts found that pursuant to R.C. 2151.419 the trial court abused its discretion in mandating a waiver of reasonable efforts pursuant to 2151.419(A)(2)(e). Specifically, the courts found that the trial court could not make a de facto decision to grant permanent custody based upon the prior termination of rights where (1) unsuitability had not been the basis for the prior terminations and (2) the parents had voluntarily completed required case plan objectives prior to the permanent custody hearing. Essentially, the appellate courts held that based upon the record, the prior termination of rights alone was insufficient to show by clear and convincing evidence that the children could not be placed with a parent within a reasonable period of time or should not be placed with a parent or that permanent custody was in the children's best interest

{¶42} However, in this case, the unrefuted evidence established that appellants' parental rights to five prior born children had been involuntarily terminated. The caseworker who testified stated that she had been actively working with the family since 2002. Additionally, the testimony of the caseworker and the certified judgment entries of permanent custody established that the prior removal of the children had been due to an unsafe home environment, poor hygiene, domestic violence, parenting deficits and sexual abuse allegations.

{¶43} Additionally, the evidence established that, in the prior permanent custody case involving the four siblings, the appellants had failed to complete any portion of their case plan for reunification, failed to comprehend or accept responsibility for the problems which led to the children's removal and failed to alleviate any of the concerns which led to the removal and permanent custody of their children. The "failure to alleviate" included testimony that the parents had also failed to make any current efforts to voluntarily follow through with any case plan objectives.

{¶44} The testimony of appellants at the dispositional hearing established that they were resistant to case plan participation. It would appear that they only became interested in any active participation a month to two weeks prior to the dispositional hearing. Furthermore, at the time of the dispositional hearing they had failed to successfully complete any parenting classes, mental health services and anger management. Failure to complete these services supports the conclusion that they had failed to alleviate the ongoing concerns regarding the deficits in their parenting skills.

{¶45} Therefore, pursuant to R.C. 2151.419(A)(2)(e), the court properly concluded that TCJFS was not required to make reasonable efforts to eliminate the continued removal of Lakyia from the child's home and to return the child to his home.

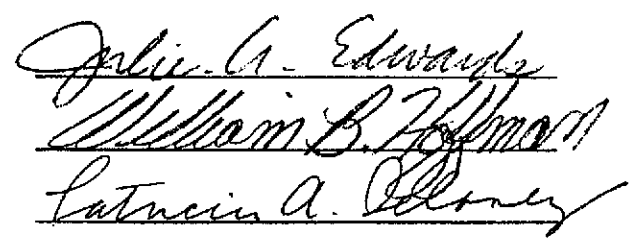
{¶46} For these reasons we find the evidence to be substantial and credible that Lakyia is a dependent child, and we further find that the trial court did not abuse its discretion in removing the requirement that appellee be required to make reasonable efforts to eliminate the continued removal of Lakyia from the child's home and to return the child to his home.

{¶47} Finally, we find that the trial court's findings, that the child could not be placed with any of the child's parents within a reasonable period of time or should not be placed with any parent and that the best interests of the child would be served by granting permanent custody to the Tuscarawas County Department of Job and Family Services, were supported by clear and convincing evidence.

{¶48} Accordingly, appellants' assignment of error is hereby overruled.

{¶49} The judgment of the Tuscarawas County Court of Common Pleas, Juvenile Court Division, is affirmed.

By: Edwards, J.
Hoffman, P.J. and
Delaney, J. concur



JUDGES

JAE/0703

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO

FIFTH APPELLATE DISTRICT

FILED
5th District Court of Appeals
Tuscarawas Co., Ohio

JUL 19 2007
ROCKNE W. CLARKE
Clerk of Courts

IN THE MATTER OF:

LAKYIA CRAIG

MINOR CHILD

JUDGMENT ENTRY

CASE NO. 2007 AP 03 0017

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Tuscarawas County Court of Common Pleas, Juvenile Court Division, is affirmed. Costs assessed to appellants.

Julie A. Edwards

William B. Hoffman

Patricia A. Delaney

JUDGES

I the undersigned Clerk of Courts hereby testify this to be a true and correct copy of the original filed in the court of Appeals of Tuscarawas County, Ohio.
Rockne W. Clarke
Clerk of Courts, Tuscarawas County
By
Deputy Clerk

EXHIBIT A

RECEIVED
FEB 2 6 2007

STATE OF OHIO * SS: COURT OF COMMON PLEAS

TUSCARAWAS COUNTY * JUVENILE DIVISION

In the Matter of

FILED
MAR 2007
JUVENILE COURT
TUSCARAWAS

LAKYIA CRAIG * Cause No. ~~06JN00640~~ 06JN00606

Dependent Child * JUDGMENT ENTRY

*

This matter came on for Dispositional Hearing before Judge Linda A. Kate on February 20, 2007. Attorney Shawn Lindsay was present as the Guardian ad Litem for Lakyia Craig. Tuscarawas County Job and Family Services (TCJFS) was represented by Attorney David Haverfield. Allan and Rayann Craig were present and represented by Attorney Nicole Stephan.

In addition to a dispositional hearing, TCJFS asks for a finding that the agency need not expend reasonable efforts to reunify Lakyia Craig with his parents pursuant to ORC 2151.419. The parties have stipulated that the Court's prior journal entries in Case Nos. 04JN00503 and 05JN00688 will be admitted into evidence.

Pursuant to ORC 2151.419, the Court finds that TCJFS need not expend reasonable efforts to reunify Lakyia Craig with Allan and Rayann Craig.

Being mindful that permanent custody should only be awarded in extreme cases as a dispositional alternative, the Court finds by clear and convincing evidence that:

1) Pursuant to ORC 2151.414(E) and (D), Lakyia Craig cannot and should not be placed with any parent within a reasonable time.

2) The Court further finds that it is in the best interest of Lakyia Craig to be placed in the permanent custody of TCJFS.

Appendix B

Accordingly, it is ordered that Lakyia Craig be placed in the Permanent Custody of Tuscarawas County Job and Family Services pursuant to Ohio Revised Code Section 2151.353(A)(4).

It is further ordered that this award of Permanent Custody be put into full force and effect immediately and all parental rights be terminated. Said child will remain in the Permanent Custody of the Tuscarawas County Job and Family Services until an adoptive home is secured and the child is placed according to law.

This matter shall come on for Annual Review hearing on the **12th day of December, 2007 at 1:45 P.M.**

It is ordered that a copy of this order be served upon the parents by regular mail and that a notation of service be made upon the Court Docket.

ALLAN AND RAYANN CRAIG ARE ADVISED THAT THEY HAVE THIRTY DAYS FROM THE DATE OF THIS ENTRY TO FILE AN APPEAL WITH THE FIFTH DISTRICT COURT OF APPEALS. THEY ARE ADVISED THAT THEY HAVE THE RIGHT TO COURT APPOINTED COUNSEL AND A FREE TRANSCRIPT OF THE PROCEEDINGS, IF THEY ARE INDIGENT, IN ORDER TO PERFECT THEIR APPEAL.

Judge of the Juvenile Court

STATE OF OHIO * SS: COURT OF COMMON PLEAS

TUSCARAWAS COUNTY * JUVENILE DIVISION

FILED
RECEIVED
JAN 25 2007

In the Matter of *

LAKYIA CRAIG * Cause No. 06JN00662

Neglected and Dependent Child * JUDGMENT ENTRY

*

This matter came on for adjudicatory hearing before Judge Linda A. Kate on January 23, 2007. Attorney David Haverfield represented Tuscarawas County Job and Family Services (TCJFS). Attorney Shawn Lindsay was present as Guardian Ad Litem for Lakyia Craig. Rayann and Allan Craig were present and represented by Attorney Nicole Stephan.

The Court finds the following facts to be true by clear and convincing evidence:

1. Lakyia Craig [redacted] is the son of Allan and Rayann Craig. He was removed from the custody of his parents at the time of his birth and placed in the temporary custody of TCJFS.

2. The Craigs have a long history with TCJFS dating back to 2002. This history resulted in the permanent custody of five other children to the agency.

3. Since 2002, the concerns in this family have remained constant. These concerns have included poor home conditions, domestic violence, anger management issues, very poor treatment of all the children, as well as sexual abuse allegations.

4. These parents have been offered every service imaginable and have been ordered to complete psychiatric and psychological evaluations. There has been no service completed by these parents in any satisfactory way.

Appendix C

5. Ms. Craig has been marginally more cooperative, but Mr. Craig has refused to work or talk with social workers. Both parents deny any responsibility for the removal of their children.

6. At this time, the concerns which existed for this family in 2002 have not been alleviated and place a newborn at serious risk of dependency, neglect, or abuse.

It is therefore ordered that Lakyia Craig be found to be a Neglected and Dependent Child pursuant to Ohio Revised Code Sections 2151.03 and 2151.04. This matter shall come on for disposition hearing on the **20th day of February, 2007 at 1:00 P.M.** **DUE TO TIME LIMITATIONS SET BY STATUTE, WHICH CANNOT BE WAIVED, NO CONTINUANCES WILL BE GRANTED HEREIN.**

Pending further proceedings herein, Lakyia Craig shall remain in the Temporary Custody of TCJFS under the previous orders of the Court. The Court finds that reasonable efforts have been made to reunite said child with his parents. At this time, it is in the best interest of said child to remain in substitute care.

Judge of the Juvenile Court

cc: Allan and Rayann Craig
Attorney Nicole Stephan
Children's Services Unit
Attorney David Haverfield
Attorney Shawn Lindsay