

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

COUNTY OF SUMMIT

IN RE: J.S.

08-0407

On Appeal from the Summit
County Court of Appeals
Ninth Appellate District

Court of Appeals
Case No, 23842

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DAVID SAUERS

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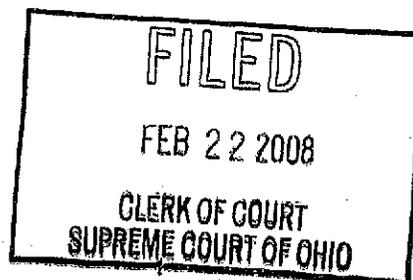


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<p style="margin-left: 40px;"><u>Proposition of Law NO. 1</u>: It is error for the court to grant planned permanent placement of a child when there is no finding of abuse, dependency, or neglect and the only complaint before the court is a delinquency complaint against the child.</p> <p style="margin-left: 40px;">Appellant was not given due process in that the required procedural safeguards were never followed and improper procedures endured through out this case denying appellant due process rights guaranteed by the <u>Fourteenth Amendment to the United States Constitution</u> and <u>Article 1, 16 of the Ohio Constitution</u>.</p> <p style="margin-left: 40px;">A. Summit County Service Board did not use reasonable efforts to reunify the child with the father and did not assist with visitation efforts as ordered by the courts and failed to prove that they have so made reasonable efforts.....</p>	
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<p style="margin-left: 40px;"><u>Proposition of Law NO. 2</u> The court’s conclusion are based on mere speculation and not upon evidence produced in the record and are in no way supported by the evidence adduced at dispositional hearing such that disposition was error.</p> <p style="margin-left: 40px;">The child was removed from appellant through a planned permanent living arrangement with evidence insufficient as a matter of law thereby denying appellant due process rights guaranteed by the <u>Fourteenth Amendment to the United States Constitution</u> and <u>Article I, 16 of the Ohio Constituion</u></p>	
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EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents critical issues involving the future interest of our children and parental rights of the people in Ohio. (1) Should a child have the right to be delinquent in order to have their own way and call all the shots? (2) Does a parent have the right to provide for his child with out undue interference and over intrusive of the government control regarding parental rights? To accept the premise of the courts for finding of PPLA without procedural safeguard or proof from evidence in the record is a dangerous precedent to set, one which can not be supported by the law, be it statue or constitution which raises a great public interest as to a parents right. The right to raise one's child is an "essential" and "basic civil right." Parents have a "fundamental liberty interest" in the care, custody, and management of the child. It is "cardinal that custody, care, and nurture of the child reside, first, in the parents." **Murray**, 52 Ohio St.3d 155, 157 (1990). Second as above, of being a great public interest is when Children Service Board, which suppose to help nurture family relationships, fostered unnatural barriers. CSB placing John (J.S) in a placement where there is substance abuse going on, and another temporary placement where there has been a family member with gang involvement. The influences of CSB managing this case proved to be detrimental to the parent-child relationship as records show that John wanted to see his father in the beginning, and a testimony that he would periodically visit his father. Do actions speak louder than words?

Finally, of being a great public interest is it proper to convert a delinquency proceeding into a dependency and neglect proceeding when no allegations or findings of dependency or neglect are had, thus making dispositional orders resulting in removal of parental

rights when the only commencement pleading are delinquency complaints? If the matter proceeded as a delinquency and neglect proceeding through not properly filed as such, shouldn't the parent(s) be afforded the same procedural rights and safeguards as that an alleged dependent and neglect case? Shouldn't the court follow proper procedures, like adopting a case plan on the record and making findings based on evidence as produced at each hearing, such that the record demonstrates the foundation for such findings? Doesn't CSB have a responsibility to in fact try to reunify the parent and child, and make some active efforts to do so, such as following the court's order of visitation? Did the State adequately present sufficient evidence to prove the best interest of the child were served by placement in Planned Permanent Living Arrangements, or that the elements for such finding in fact existed from the record?

Statement of the Case

This case originated as two cases, with two case numbers. In Number DL 05-010-4631, Juvenile John Sauers, hereinafter "John" or "Johnny" was charged by way of complaint filed on October 21, 2005 alleging him to be a Delinquent Child by Domestic Violence, against his Father. He was taken into detention on October 20, 2005, released to his father, Appellant David C. Sauers, hereinafter "Appellant". On October 24, 2005, when John decided to admit the charges, John was given three months probation and again released to his father, Appellant John C. Sauers.

As a result of this finding of delinquency, John was charged with a probation violation in the case number DL 05-10-4631. The record does not contain the underlying charge to this probation violation.

In Number DL 05-11-4979 John was also charged with delinquency and a probation violation. The record does not contain the underlying charge to this probation violation. This case was filed on November 17, 2005 and John was alleged to be a delinquent child by way of a Chronic Truant. Apparently, a disposition hearing was held on December 9, 2005 at which time John admitted the chronic truancy charge

in case number DL 05-11-4979 and the probation violation charge in Case Number DL 05-10-4631 at which time he was found delinquent and the matter set for Disposition on December 15, 2005. Apparently at this juncture, the two cases were combined.

In fact, apparently the Disposition was held on December 16, 2005. There is no indication any attorneys were present and Appellant was present without the benefit of counsel.

The Judgment entry filed on December 20, 2005 states the Court found that reasonable efforts were made to maintain John in his home with Appellant, but that it was not in John's best interest to do so. There are no other findings indicating what reasonable efforts were made. The court ordered John in Emergency Temporary custody of CSB. Despite the Journal Entry of December 20, 2005, indicating the matter came before the court for Disposition on December 16, 2005, the court on December 28, 2005 issued a Judgment Entry indicating that disposition in the matter is scheduled for January 19, 2006, at which time the Original Case Plan was filed. This plan indicated that John's "Permanency Goal" was reunification and that he was placed with Jonnie Smith at 733 Excelsior, Akron, Ohio. There is no indication why he was not placed in his own home. There is nothing found in the record that this Case Plan was ever adopted by the Court.

By Journal Entry dated January 25, 2006, the Court indicated that "The caseworker reviewed the case plan objectives on the record." The Court ordered that John remain in the temporary custody of CSB and that Appellant "shall have visitation at least one (1) hour per week to be supervised by Jonnie Smith. Ms Smith may allow additional visitation at her sole discretion." There is no adoption of the Case Plan in this order. A probation violation was filed on February 2, 2006, and on February 9, 2006 John admitted the Probation Violation. The Court ordered John serve twenty hours of Community Service. It was further ordered that "CSB will arrange for visits with Father at the Visitation Center" and "CSB will assist Father in obtaining the requested psychological evaluation".

On February 17, 2006 John was charged with a probation violation and it appears that on April 27, 2006, John denied the charges.

On April 26, 2006 Appellant hand wrote a note which was treated as a Motion for Legal Custody as being filed by the Father, Appellant David C. Sauers.

On May 5, 2006, an "Emergency Change of Case Plan" was filed. On that date, a motion was filed by CSB to suspend visitation and on May 24, 2006 the court ordered that the Father David C. Sauers have supervised visits with John. On June June 15, 2006, John admitted the probation violation, ordered to serve 10 days in detention, and then to be released to Jonnie Smith on June 25, 2007.

Thereafter, the matter proceeded with various continuances and on August 9, 2006, John was charged with a probation violation, with a pretrial set for September 11, 2006. At that pretrial, the court found that "A residential setting is necessary for John to receive the treatment he needs. It is in his best interests to be placed in such a setting (sic) so that his serious mental health and substance abuse issues can be addressed." There are no other Findings of Fact, and none at all regarding placement with Father or about Father. The Court made "Dispositional Orders" that John is to be released from detention and placed at Cornell Abraxis. Nothing further is apparent from the record.

The matter proceeded and on October 20, 2006 CSB filed a first motion for extension of Temporary Custody which was granted on October 27, 2006. An Amended Case plan was filed on October 26, 2006. There is nothing in the record to indicate the court adopted any case plans. The matter continued to proceed.

On January 19, 2007, CSB filed a motion to Modify Temporary Custody to PPLA. On February 12, 2007 the Father David C. Sauers filed a Motion, by counsel, for Legal Custody. The matter proceed to trial commencing June 19, 2007 on these motions.

On July 12, 2007 the Court issued a Judgment Entry of decision denying Father's motion for Legal Custody and granting the motion of Planned Permanent Living Arrangement of CSB. Further review was referred to the Magistrate and probation was ordered to continue pending further court order.

This appeal was timely filed.

Statement of the Facts

The following facts are found from the transcript filed herein and are referenced

here and in the argument where pertinent. Transcript references are more specifically and detailedly set forth in the argument. Appellant further incorporates the Statement of the Case in this statement for brevity purposes.

Appellant David C. Sauers was born September 17, 1965 and has one child in controversy herein, John Sauers born May 16, 1991. **See, Case Plan.** He lives in Akron, Ohio in a house that he has owned for 12 years and he has a Bachelors of Arts Degree in Business Management from Malone college and has a real estate license. He is gainfully employed at Dave's Market in Akron. T157.

In October 2005, he signed delinquency charges against John Sauers alleging domestic violence claiming John jumped on him and punched him. **See, Delinquency complaint.** John admitted the charges, and John was given three months probation and released to Appellant. John was then charged with a probation violation. At a disposition hearing on December 16, 2005, John was placed into emergency temporary custody with the Court finding that "A very volatile situation exists in Father's home." "John had reported that he was hit in the face and taunted by Father." There are no reports of evidence being taken at this hearing.

A case plan was filed on January 19, 2006. There is nothing in the record to show this case plan was adopted by the court or made a court order. In efforts to comply with CSB directives, Appellant began counseling with Child Guidance & Family Solutions and then individual counseling with that agency with Robert Martin White. The States Exhibits which contain his chart demonstrate he cooperated with counseling and did what was required, and that he was discharged by Mr. White. In the discharge summary dated October 26, 2006, **States Exhibit #1, Page 1,** the discharge code indicates that "goals met - no additional services needed."

He also underwent a psychological evaluation by Summit Psychological Associates, Inc. , Arcangela S. Wood, Psy.D. Previously, on June 1, 2004, he had an evaluation through Summit County Domestic Relations Court for a visitation with his daughter. **State's Exhibit 4.** Review by these three professionals, Robert Martin White, an outpatient therapist at Child Guidance and Family Solutions, Dr. Wood from Summit Psychological Associates, Inc., and Dr. Ann S. Hickin, Psychologist from

Northeast Behavioral Health, LTD., all within a span of two years produced three different assessments, with three different diagnoses given to Mr. Sauers. In **State's Exhibit #4**, Dr. Hickin opined at page 4 that "it does not seem that he has a personality disorder." Dr. Wood in **State's Exhibit #2** diagnosed him as "alcohol Dependent with Physiology dependence in reported early partial remission with cannabis abuse" and, on Axis II, borderline personality disorder. Mr. White made the diagnosis of "adjustment disorder NOS and no Axis II diagnosis. **State's Exhibit #1, page 4.**

Appellant does not smoke, and stated that he only has drunk wine in 2005, after being abstinent from drugs and alcohol for the preceding nine years. **State's Exhibit 2, page 4.**

Appellant complied with the case plan objectives, and made efforts to see John. Initially, he saw John at the visitation center T111, but visits tapered off as John no longer wanted to visit with him. CSB acquiesced to John's desire to not visit, and so did not require or promote visitation T112 despite Court ordered supervised visitation. Appellant made continual efforts to try to get visitation with John, calling the CSB worker, Danielle Hampton constantly. T162-3. He believed that he was the natural father, and it was best for he and John to get back together, and use counseling measures or other means to accomplish reunification as the goal was set in the case plan. T164. Appellant believed he was much better equipped to deal with John because his older child, David was no longer in the home because David contributed to the straining of the relationship between Appellant and John in that David used to try to be the parent, controlling John taunting him. T165. Appellant believed that as a result of his experience in college with a degree in business management, the tools in this course work better enabled him to be able to be a parent to a 15 year old teenager. T163.

Appellant filed a note requesting the return of his children on April 26, 2006, which the Court viewed as a motion for legal custody. On October 20, 2006, CSB filed a Motion for First Six Month Extension of Temporary Custody and on January 19, 2007 CSB filed a Motion for Planned Permanent Living Arrangement.

The matter proceeded to trial on Appellant's Motion for Legal Custody and

CSB's motion for PPLA and the Court decision, overruling Appellant's Motion.

In support of its position on these issues, the appellant presents the following argument.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAWS

Proposition of Law NO. 1:

IT IS ERROR FOR THE COURT TO GRANT PLANNED PERMANENT PLACEMENT OF A CHILD WHEN THERE IS NO FINDING OF ABUSE, DEPENDENCY, OR NEGLECT AND THE ONLY COMPLAINT BEFORE THE COURT IS A DELINQUENCY COMPLAINT AGAINST THE CHILD

APPELLANT WAS NOT GIVEN DUE PROCESS IN THAT THE REQUIRED PROCEDURAL SAFEGUARDS WERE NEVER FOLLOWED AND IMPROPER PROCEDURES ENDURED THROUGHOUT THIS CASE DENYING APPELLANT DUE PROCESS RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, §16 OF THE OHIO CONSTITUTION.

A. SUMMIT COUNTY CHILDREN SERVICES BOARD DID NOT USE REASONABLE EFFORTS TO REUNIFY THE CHILD WITH THE FATHER AND DID NOT ASSIST WITH VISITATION EFFORTS AS ORDERED BY THE COURT AND FAILED TO PROVE THAT THEY HAVE SO MADE REASONABLE EFFORTS

"The United States Supreme Court has stated that the right to raise one's children is an 'essential' and 'basic civil right.' Parents have a 'fundamental liberty interest' in the care, custody, and management of the child. Further, it has been deemed 'cardinal that the custody, care, and nurture of the child reside, first, in the parents.'"

"Similarly, this court has long stated that parents who are suitable persons have a 'paramount' right to the custody of their minor children." *In re Murray*, 52 Ohio St.3d 155,157 (1990).

Children and their parents have an interest in reunification following a temporary-custody order. *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840 (2007). The Ohio Supreme Court held in *In re C.F.* 113 Ohio St.3d 73 at ¶14, that "except for some narrowly defined statutory exceptions, the state must make reasonable efforts to reunify the family before terminating parental rights."

Firstly, it is amazing how little there is in this record about the condition of John, and how the focus is predominantly on Appellant. Is this the basis for proper decision?

In this instance, Appellant made efforts to get his child back, and there is no evidence that the state made reasonable efforts to reunify the family before granting Planned Permanent Living Arrangement, hereinafter "PPLA".

Appellant filed a motion for legal custody, to return John to him and the state filed a motion for PPLA pursuant to §2151.415(C)(1). The Court stated in its Judgment

Entry that "The sole issue before the Court is which of the dispositional options, legal custody to Father or PPLA is in John's best interest." Thus, as argued below, in order to find that PPLA should be granted, the Court shall not place a child in PPLA unless it finds by clear and convincing evidence that PPLA is in the best interest of the child and that "The child, because of physical, mental or psychological problems or need, is unable to function in a family-like setting and must remain in residential or institutional care." The court cannot make an order of PPLA through a delinquency complaint.

Appellant argues that the procedure leading to this result is flawed as PPLA is an improper dispositional option here and not contemplated in law and the decision of the trial court is against the manifest weight of the evidence in that CSB by the State failed to carry their burden of proof, such that the court's finding granting PPLA rather than legal custody to Appellant is an abuse of discretion.

As in most cases involving manifest weight arguments or abuse of discretion arguments, the argument is very fact specific. The transcript and exhibits must thus be reviewed and analyzed as a whole and the following are only fact arguments which are most notable. Upon review of the testimony taken as a whole, it is clear that the court lost its way in deciding the facts against Appellant and in so finding that it is in the best interest of child John to be placed in PPLA, rather than granting legal custody to Appellant father. No findings of evidence support this "best interest" determination.

In determining whether a trier of fact has rendered a decision against the manifest weight of the evidence:

...an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction [or in this case finding of dependency] must be reversed and a new trial ordered. **State v. Otten** (1986), 33 Ohio App.3d 339, 340.

Accordingly, before an appellate court will reverse a judgment as being against the manifest weight of the evidence, it must determine whether the judgment of the trier of fact was supported by "some competent, credible evidence going to all the essential elements of the case[.]" **C.E. Morris Co. v. Foley Constr. Co.**, 54 Ohio St.2d (1978).at syllabus.

Firstly, this case is interesting and distinguished from many cases reviewed by appellate courts. This is a delinquency case and not a dependency, abuse, nor neglect case. The child was never charged as being dependent, abused, nor neglected and Appellant was never accused of such. The matter began as a delinquency matter charging John with Delinquency, and with a probation violation. Hence the procedural process herein must be greatly scrutinized by this Court. Did Appellant receive Due Process according to the law? The record does not demonstrate that he did.

Yet, this case has an appearance of being a dependency and neglect case in that John was placed in detention for these delinquency allegations, and about a month later, the court ordered John to be placed in the emergency temporary custody of Summit County Children Services Board, hereinafter referred to as "CSB". Thus, the procedural safeguards for such a case must be utilized to provide Due Process and Equal Protection to Appellant when he is losing his rights to placement of his child.

To determine whether the state has produced sufficient evidence to support a finding of dependency, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the charge of dependency proven by clear and convincing evidence. **See, State v. Jenks** (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. This burden of proof is true in all relevant respects in this case.

It is helpful to note that **Title 21** of the **Ohio Revised Code** which pertains to Juvenile Court is comprised of only three chapters, with the third applying only to Cuyahoga County Juvenile Court. Hence, there is **Chapter 2151** and **Chapter 2152**. **Chapter 2151** is entitled "Juvenile Court" and deals primarily with Unruly children, Neglected Children, Abused Children, and Dependent Children. It provides for establishment and jurisdiction, and procedure in children's cases.

Chapter 2152, however, a second distinct chapter, is entitled "Delinquent Children; Juvenile Traffic Offenders". It is under this section that the action commences and for which jeopardy arises in that the only complaints herein are complaints alleging that John is a delinquent child, with no complaints or allegations of unruly, neglected, abused, or dependent child.

§2152.19(A) provides for Disposition orders if a child is adjudicated a delinquent child and states in pertinent part that:

(A) If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:

(1) Any order that is authorized by section **2151.353** of the Revised Code for the care and protection of an abused, neglected, or dependent child;

§2152.01 presents the purposes of disposition under the Delinquent children chapter of **2152**. It states in pertinent part:

(A) The overriding purposes for dispositions under the chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section....

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151 of the Revised Code apply to proceedings under this chapter. (Emphasis Added).

§2151.353 provides any of the following pertinent orders of disposition, and is that which is used if a child is adjudicated an abused, neglected, or dependent child. The court may 1) place the child in protective supervision; 2) commit the child to the temporary custody of CSB; 3) award legal custody to either parent; 4) Commit the child to the permanent custody of CSB; 5) Place the child in a planned permanent living arrangement with CSB. It is this latter subsection that is relevant here of which the Court simply did not have sufficiency to place John in PPLA.

Thus, even though delinquency disposition provides for **2151.353** orders if the court elects to proceed under this section, all procedural safeguards as well as standards for findings must be followed through this section pursuant to **§2152.01** and chapter **2152**. **§2151.353 (A)(5)** requires the court to find PPLA is in the child's best interestt

The text of **§2151.353 (A)(5)** is as follows:

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(5) Place the child in a PPLA with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a PPLA and if

the court finds, by clear and convincing evidence, that a PPLA is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of section **2151.414** of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) the child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living. (emphasis added).

This **2151.353** section thus provides for PPLA, but requires certain procedural safeguards.

§2151.353 (B) states:

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a **PPLA** shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a PPLA as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a PPLA will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent. (emphasis added).

* * *

The Court in its Judgment Entry referenced **§2151.415** of the **Ohio Revised Code** in making its Findings and Order. It quoted:

If an agency, pursuant to division (A) of this section requests the Court to place a child into a PPLA, the agency shall present evidence to indicate why a PPLA is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. A court shall not place a child in PPLA, unless it finds, by clear and convincing evidence, that a PPLA is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental or psychological problems or need, is unable to function in a family-like setting and must remain in residential or institutional care. (Emphasis added).

This section requires the court to use the evidence to support "best interests" .

Thus, the standard which the trial court utilized in its decision was that as above recited of **§ 2151.415** of the code. There is no support by the evidence of "best interest of the child." This referral to "division (A)" references the event, as in this case, where CSB is given temporary custody pursuant to **§ 2151.353** and states in pertinent part:

(A) Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is required to be made, a public children services agency or private child placing agency that has been given temporary custody of a child pursuant to section 2151.353 of the Revised Code....

It therefore follows that if the Court decides the matter in accord to the **Chapter 2151** statutes pertaining to dependency, abuse, or neglect as incorporated through the dependency statutes of **Chapter 2152**, the procedural safeguards must be followed. In this instance, there is nothing in the record to demonstrate that Appellant was at any time served with a Complaint and given the notice requirements as contained in **§2151.353 (B)**. Hence, the court had no jurisdiction to make the order that it did pertaining to PPLA and it should have returned the child to Appellant upon termination of Temporary Custody.

Appellant submits that **§2151.415** defines the process in a Dependency, Neglect, or Abuse case, and is not the contemplation of a delinquency disposition with out due process of **Chapter 2151**. This section flows through the sections in the code following Dependency, Neglect, or Abuse cases, not delinquency cases which serve to punish and rehabilitate a juvenile offender. Here, the Father was punished without due process in this regard, and there are no findings of evidence to support "best interests".

This confusion between the delinquency disposition and dependency, neglect, and abuse disposition can be rectified only if appropriate findings and safeguards are met. In this case, delinquency complaints were filed. No abuse, neglect, or dependency was ever charged or found, and somehow, the matter ended up removing the parental rights of Appellant permanently without sufficient procedural safeguards at the beginning of the case where he would be advised that the possibility of PPLA in fact

Thus, at first analysis, the Court must overrule the lower court and return the child to his father, in that the court did not have jurisdiction because the procedural safeguards were not granted here, and the statutory procedures not followed. As such, Appellant was denied his Constitutional right to Due Process and Equal Protection of the law.

Furthermore, CSB failed to prove that it made reasonable efforts to reunify the family before terminating Appellants parental rights. This argument is also supported through analysis of the record in the next assignment.

Proposition of Law NO. 2:

THE COURT'S CONCLUSIONS ARE BASED ON MERE SPECULATION AND NOT UPON EVIDENCE PRODUCED IN THE RECORD AND ARE IN NO WAY SUPPORTED BY THE EVIDENCE ADDUCED AT DISPOSITIONAL HEARING SUCH THAT DISPOSITION WAS ERROR.

THE CHILD WAS REMOVED FROM APPELLANT THROUGH A PLANNED PERMANENT LIVING ARRANGEMENT WITH EVIDENCE INSUFFICIENT AS A MATTER OF LAW THEREBY DENYING APPELLANT DUE PROCESS RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, §16 OF THE OHIO CONSTITUTION.

THE STATE FAILED TO CARRY ITS BURDEN OF PROVING THE CASE BY CLEAR AND CONVINCING EVIDENCE IN THAT THE EVIDENCE IS INSUFFICIENT TO ALLOW A FINDING GRANTING PLANNED PERMANENT LIVING ARRANGEMENT SUCH THAT THE DECISION OF THE COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. APPELLANT DAVID C. SAUERS DEMONSTRATED THAT HE WAS A SOUND AND FIT FATHER AND THAT THE CHILD WAS NOT DEPENDENT.

There is insufficient evidence to demonstrate that "the child, because of physical, mental or psychological problems or need, is unable to function in a family-like setting and must remain in residential or institutional care." Appellant will attempt in the short pages allowable to demonstrate the lack of proof presented by Appellee CSB. In so doing, it can be seen that the focus, in fact, was on the Appellant father's deficiencies, and **not** issues with the child. There is no evidence supporting "best interest" of PPLA.

Appellant might acknowledge the custom of not holding to strict evidentiary rules in dispositional hearings, that the **Ohio Rules of Evidence** are said to not apply. Yet, there must be some quantum of requirement of proof issues in a record otherwise there will never be an opportunity for appellate review to adequately scrutinize the lower court procedure. Although in a Juvenile Court case where there is one individual, typically the Judge or Magistrate, who follows the case all along, a decision

should not be based on all of the information, hearsay, or whatever that crosses the triers mind throughout the total case process from start to finish. Was this the case, there could be absolutely no method to review any case in accordance to any established standard of review. Being mindful that the standard of review in this type of case is whether the court abused its discretion, the most minimal rule of law and justice must at least require that the review is based on only upon the record when identifying “credible evidence” and not equating credible evidence with what the trier of fact brings into the trial which is not on the record. Hence, this record does not support the Trial Court’s finding of fact and resultant order, and there are no findings supporting the conclusion of the Court that it is in “John;s best interest to be placed in PPLA”.

The court, in its findings in the Judgement Entry, found, that John “is in need of care that is beyond that which I provided in a family-like setting due to his severe behavior problems”. There is nothing in any of these exhibits demonstrating John’s “severe behavior problems that is in need of special care.”

CONCLUSION

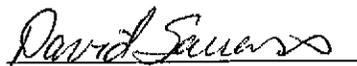
For these reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The most significant right of an individual is their Constitutional right to the pursuit of happiness, free from over intrusive governmental control. One of the most basic tenants from this principle is the freedom from undue interference of the government regarding parental rights. To accept the premise of the court for a finding of PPLA without procedure safeguards or proof from evidence in the record is a danger precedent to set, one of which can not be supported in law, be it statue or Constitution. It will set a precedence that it will alienate are tradition,

heritage, best interest of our society and so forth. The right to raise one's children is an "essential" and "basic civil right." Parents have a "fundamental liberty interest" in the care, custody, and management of the child. It is "cardinal that the custody, care, and nature of the child reside, first, in the parents."

This case was mismanaged. CSB did not do their part in establishing reasonable efforts to achieve visitation or reunification. CSB did foster the unnatural barriers. They told a child not to go around his father and later rewarding him by letting him call all the shots and did not abide by the court order of visitation despite efforts by Dad, and his compliance with CSB request. Appellant David Sauers could just never win with CSB and their management of this case, no matter what he did. Their action did not contribute to the parent-child relationship or an orderly civilization.

For these reasons the appellant request that this court accept jurisdiction in this case so that the important issues will be reviewed on the merits.

Respectfully submitted,


David Sauers

Certificate of Service

I certify that a copy of the Memorandum In Support Of Jurisdiction was sent by regular mail to counsel of record Phillip D. Bogdanoff, Assistant Prosecuting Attorney, for Appellee, Summit County Safety Building, 53 University Avenue Akron, Ohio 44308 on February 21 2008.


David Sauers

APPENDIX

CONTENTS

Decision and Journal entry of PPLA appealed from the Ninth District Court of Appeals dated January 23, 2008.

COURT OF APPEALS
DANIEL M. HORRENN

STATE OF OHIO

JAN 23 AM

IN THE COURT OF APPEALS

)ss:

NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT

) SUMMIT COUNTY

CLERK OF COURTS

IN RE: J. S.

C. A. No. 23842

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DL 05-10-4631
DL-05-11-4979

DECISION AND JOURNAL ENTRY

Dated: January 23, 2008

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

SLABY, P. J.

{¶1} Appellant David Sauers ("Father") appeals the judgment of the Summit County Court of Common Pleas, Juvenile Division, denying Father legal custody of his son J.S., d.o.b., May 16, 1991, and placing J.S. into a Permanent Planned Living Arrangement ("PPLA") with Summit County Children Services Board ("CSB"). We affirm.

{¶2} This matter began when Father signed a complaint in 2005, indicating that J.S. was a delinquent child by reason of domestic violence, in violation of R.C. 2919.25. J.S. admitted to the allegations, was adjudicated a

delinquent child and placed on three months probation. On November 8, 2005, J.S. was charged with a probation violation for failing to attend counseling and school and failing to obey house rules. On December 14, 2005, J.S. admitted the allegations and the court found that he had violated his probation. On December 20, 2005, the trial court issued its judgment entry related to the December 14, 2005 disposition hearing finding that “[a] very volatile situation exists in Father’s home *** [and that J.S.] reported that he was hit in the face and taunted by Father.” The trial court then ordered that J.S. be placed in the emergency temporary custody of CSB. The December 14, 2005 entry also continued the dispositional hearing until December 30, 2005, which date was later continued to January 19, 2006. Father was present at the December 14, 2005 hearing and a copy of the trial court’s December 16, 2005 entry was mailed to Father.

{¶3} On January 18, 2006, October 25, 2006, and January 2, 2007, original and amended case plans, prepared by CSB and signed by Father, were filed with the trial court. On January 25, 2006, subsequent to the January 19, 2006 disposition hearing, at which Father was present with counsel, the trial court ordered, in relevant part, that J.S. would remain in the temporary custody of CSB and that father was to have one hour per week of supervised visitation. A guardian ad litem was also appointed to represent Father’s best interests.

{¶4} On April 26, 2006, Father filed a motion requesting that J.S. be returned to his custody, which motion CSB opposed and the trial court denied on

October 27, 2006, after a trial. The October 27, 2006 judgment entry found that the CSB had made reasonable efforts to return J.S. to his Father's custody, but that his return would be contrary to J.S.'s best interest.

{¶5} On January 19, 2007, CSB moved the trial court to modify its order of disposition from temporary custody to a PPLA pursuant to R.C. 2151.415(C)(1). On February 12, 2007, Father again moved for legal custody of J.S. The trial court set a hearing date of June 19, 2007, to consider both motions and an in-camera interview of J.S. was set for June 20, 2007.

{¶6} The hearing proceeded as scheduled. Present at the hearing were the prosecuting attorney, CSB caseworker, Father, attorney for Father, guardian ad litem for Father, attorney/guardian ad litem for J.S., and J.S.'s probation officer. On July 12, 2007, the trial court entered judgment ordering that J.S., then sixteen years old, be placed in a PPLA ("Judgment Entry"). The trial court issued the Judgment Entry after finding, by clear and convincing evidence pursuant to R.C. 2151.415(C), that a PPLA was in the best interest of J.S. The Judgment Entry noted that J.S. did not want to live with his father because of alleged prior abuse; that there were no other available living options and that J.S. was doing well in his current placement. The Judgment Entry also found that Father's psychological issues when coupled with J.S.'s refusal to have anything to do with his Father made granting legal custody to Father inappropriate.

{¶7} Father timely appealed the Judgment Entry and has raised two assignments of error.

Assignment of Error No. I

“It is error for the court to grant planned permanent placement of a child when there is no finding of abuse, dependency, or neglect and the only complaint before the court is a delinquency complaint against the child[.]

“[Father] was not given due process in that the required procedural safeguards were never followed and improper procedures endured throughout this case denying [Father] due process rights guaranteed by the Fourteenth Amendment to the United States Constitution, and Article 1, §16 of the Ohio Constitution.

“A. Summit County Children Services Board did not use reasonable efforts to reunify the child with the father and did not assist with visitation efforts as ordered by the court and failed to prove that they have so made reasonable efforts.” (Emphasis sic).

{¶8} Father asserts that the trial court was without authority to order that J.S. be placed in a PPLA as the only issue before the court was the delinquency of J.S. and that by doing so, Father’s due process rights were violated. Father maintains that the issue of abuse, dependency or neglect was not before the trial court and that the trial court was required to make such a finding before ordering a PPLA. We disagree. We will discuss Father’s argument that the CSB did not use reasonable efforts to reunify J.S. with his father and failed to assist with visitation efforts in our discussion of Father’s second assignment of error.

{¶9} Father did not object to the trial court's consideration of CSB's motion to place J.S. in a PPLA. The trial court stated the purpose of the hearing, without objection from Father:

"[W]e are here today set for trial on the motions that are pending before the court, those being for [J.S. and D.S.] to both be placed in planned permanent living arrangement with Summit County Children Services Board."

The trial proceeded only as to the disposition of J.S. because Father agreed to the placement of his other son, D.S., in a PPLA. Father indicated that he opposed a PPLA for J.S. and wished to pursue custody of J.S., pursuant to his motion.

{¶10} Because Father failed to object to the trial court's consideration of CSB's motion for a PPLA, "[w]e will not reach the merits of this assigned error because it has not been preserved for appellate review." *In re Guardianship of Stein* (2004), 157 Ohio App.3d 417, 420, 2004-Ohio-2948, at ¶8, reversed on other grounds by 105 Ohio St.3d 30, 2004-Ohio-7114. "It is a general rule that an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." *State v. Childs* (1968), 14 Ohio St.2d 56, 43 O.O.2d 119, paragraph three of the syllabus. "Constitutional rights may be lost as finally as any others by a failure to assert them at the proper time." *Id.* at 62.

{¶11} Father asserts that the PPLA action should not have gone forward absent a dependency, abuse or neglect hearing and a finding by the court related

thereto. Father maintains that the trial court violated his due process rights in proceeding with the PPLA hearing. “To timely assert such a challenge, at a minimum, [Father] should have raised an affirmative objection prior to, or at least at the commencement of, these proceedings.” *In re Stein*, 2004-Ohio-2948, at ¶10. Instead, as noted above, Father participated, without objection, in the hearing, which was announced at the beginning of the hearing to be one based on Father’s motion for custody and CSB’s motion for a PPLA and Father’s counsel acknowledged the purpose of the hearing. Moreover, Father’s counsel and guardian ad litem were served with CSB’s PPLA motion on or about January 22, 2007, more than five months prior to the hearing.

{¶12} Father raised the issue of his constitutional rights for the first time during this appeal, “when it was clearly too late for the trial court to correct the alleged error.” *Id.* at ¶12. Because Father failed to timely raise this alleged error in the trial court, we will not reach the merits of his constitutional challenge.

{¶13} Father’s first assignment of error is overruled.

Assignment of Error No. II

“The court’s conclusions are based on mere speculation and not upon evidence produced in the record and are in no way supported by the evidence adduced at dispositional hearing such that disposition was error.

“The child was removed from [Father] through a planned permanent living arrangement with evidence insufficient as a matter of law thereby denying [Father] due process rights guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, §16 of the Ohio Constitution.

*The Sufficient
B's
F's*

“The state failed to carry its burden of proving the case by clear and convincing evidence in that the evidence is insufficient to allow a finding granting planned permanent living arrangement such that the decision of the court is against the manifest weight of the evidence. [Father] demonstrated that he was a sound and fit father and that the child was not dependent.” (Emphasis sic).

{¶14} Father asserts that the trial court’s decision ordering a PPLA was against the manifest weight of the evidence and was not supported by sufficient evidence. Father further maintains that a PPLA was not in the best interest of J.S. We disagree.

{¶15} The Supreme Court of Ohio noted that the standards of sufficiency and manifest weight are merged in the civil context and set forth the manifest weight standard in *State v. Wilson*, 113 Ohio St.3d, 382, 2007-Ohio-2202, at ¶24, stating:

“[T]he civil manifest-weight-of-the-evidence standard was explained in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, syllabus (‘Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence’). We have also recognized when reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81. This presumption arises because the trial judge had an opportunity ‘to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.’ *Id.* at 80. ‘A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.’ *Id.* at 81.” *Wilson* at 24.

{¶16} The trial court ordered the PPLA pursuant to R.C. 2151.415(C)(1),

which states, in relevant part:

“If an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

“(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.”

Bias {¶17} Clear and convincing evidence is:

“that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established. Where the evidence is in conflict, the trier of fact may determine what evidence should be accepted and what evidence should be rejected. As a reviewing court, we must examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” (Internal citations, quotations, and alterations omitted.) *In re Dukes* (1991), 81 Ohio App.3d 145, 153.

{¶18} The trial court found, and we agree, that it was in the best interest of J.S. to order the PPLA. First, J.S. did not want to live with his Father because of Father’s abusive tendencies, as J.S. stated during an in-camera interview with the trial judge. Moreover, four witnesses testified on behalf of CSB in support of the trial court’s conclusion that the PPLA was in J.S.’s best interest. Father and his girlfriend testified on behalf of Father.

{¶19} Robert White is an outpatient therapist at Child Guidance and Family Solutions (“CGFS”). Mr. White was Father’s therapist after he was referred to CGFS. Mr. White testified that he diagnosed Father with an adjustment disorder. As part of his therapy, Mr. White explained that he asked Father to write a letter to both of his sons to try to form some sort of connection, but Father never wrote the letters. Mr. White testified that therapy was discontinued because the skill (the letters), taught to Father, was not used so that future therapy would not be productive. Mr. White rated Father’s progress in terms of improving family functioning as minimal.

{¶20} Dr. Arcangela Wood is a clinical psychologist at Summit Psychological Associates. Dr. Wood treated Father after a referral by CSB. Dr. Wood testified that she had two sessions with Father in March 2006, and that Father was cooperative. However, based on information learned during her sessions with Father, Dr. Wood diagnosed Father with alcohol dependence, cannabis abuse, and borderline personality disorder and made various recommendations, including parenting classes and individual counseling to “focus on decreasing his maladaptive personality characteristics as well as increasing his empathy for his children and the emotional problems that his children were experiencing at the time.” Dr. Wood also recommended that Father abstain from alcohol and participate in random drug screens. Dr. Wood finally recommended that J.S. not be returned to the Father until he completed the recommendations

because “without receiving treatment for the traits and the problems [Father] has with this disorder” Father’s custody of J.S. would be detrimental to J.S. Dr. Wood had no knowledge of Father’s treatment after she made her recommendations.

{¶21} Among the behaviors that caused Dr. Wood to make her recommendation was Father’s acknowledgement that he knew of no other way to discipline J.S. other than via corporal punishment with a belt. Dr. Wood also testified that Father was unaware of J.S.’s mental health diagnosis but was fully aware of J.S.’s extensive legal history. Dr. Wood further stated that although Father told her he had completed several parenting classes, he was not able to give her an example of any skill he learned in the classes. Dr. Wood testified that Father told her about his drug and alcohol dependency, including his unsuccessful attempts to abstain. Dr. Wood stated that J.S.’s problems caused Father stress and that “under the influence of alcohol *** [Father] didn’t care about anybody else and was really caring about himself[.]”

{¶22} Shannon Imhoff is a counselor at Cornell Abraxis (“CA”), an inpatient drug and alcohol treatment facility for adolescents. Ms. Imhoff treated J.S. after a referral from CSB. Ms. Imhoff testified that J.S. had a substance abuse problem when he came to CA. Ms. Imhoff testified that J.S. had animosity and resentment towards Father and did not want to live or visit with him. J.S. told Ms. Imhoff that Father had physically abused him and his brother. Ms. Imhoff further indicated that J.S. told her that if he was forced to live with Father, he

would do whatever he had to do to get out of that situation. Ms. Imhoff explained that her concern was that J.S. would harm Father if returned to the family home.

{¶23} Danielle Hampton is a protective social worker at CSB. She testified that she was assigned as the caseworker for the Sauers family. Ms. Hampton testified that she prepared and filed a case plan in the Sauers case, which was reviewed with Father. The goal of the case plan was to reunify J.S. with Father and placing J.S. with a relative in the meantime, the latter of which was not possible. Ms. Hampton testified that the first objective of the case plan was for Father and J.S. to refrain from using drugs or alcohol. Both Father and J.S. completed this objective.

{¶24} Ms. Hampton testified that the second objective of the case plan was for Father and J.S. to address their emotional and behavioral issues in a therapeutic setting. Ms. Hampton stated that Father did not achieve this objective as he was terminated from CGFS. J.S. was in the process of completing this objective. Ms. Hampton testified that to her knowledge Father had not sought counseling at any other agency.

{¶25} Ms. Hampton testified that the next objective of the case plan was for Father to demonstrate age-specific parenting techniques. Ms. Hampton referred Father to Greenleaf to attend parenting classes and testified that he did attend those classes. However, Ms. Hampton stated, the counselors at Greenleaf indicated that Father had a “lack of insight in parenting skills” and would often

come up with “off-the-wall” answers to questions posed in class. Ms. Hampton testified that she continued to have concerns that Father could effectively parent J.S. and recommended that he continue counseling. Ms. Hampton indicated that Father could not articulate to her skills he had learned in parenting class and had, therefore, not completed this portion of the case plan.

{¶26} Ms. Hampton testified that another case plan objective was for Father to complete a psychological assessment, which Father completed. Ms. Hampton indicated that the recommendation of the assessment was that J.S. not be returned home until Father successfully completed counseling. Thereafter, Father completed six sessions of counseling, but Ms. Hampton stated that she has never been notified that Father has obtained any further counseling.

{¶27} Ms. Hampton testified that it had been more than a year since J.S. had visited with Father at the visitation center and visits were officially suspended because J.S. refused to visit with him and J.S.’s counselors recommended that visitation be suspended. She stated that it is not CSB policy to force visitation where a child refuses and it is not recommended by the child’s counselor. Ms. Hampton indicated that Father did send cards to J.S. while he was at CA, but J.S. shredded them and did not write back to Father. Ms. Hampton indicated that never in two years had a teenage client refused to see his or her parent.

{¶28} Ms. Hampton testified that J.S. is currently living in a therapeutic foster home. Ms. Hampton indicates that J.S. is willing to accept a PPLA and is

on a waiting list for independent living. Ms. Hampton explained that CSB has considered all placement options and believes that long-term foster care (a PPLA) is in the best interest of J.S.. Ms. Hampton explained that J.S. is not ready to go home and that several of his counselors have indicated that J.S. should not go home because of the volatile situation there. The goal with regard to the PPLA, indicated Ms. Hampton, is for J.S. to remain in his current placement because he is thriving there, going to school, being more respectful, and not using drugs. Ms. Hampton testified that it is her recommendation that any visitation with Father be left to J.S.'s discretion and only be conducted in a therapeutic setting.

{¶29} Angela Wiley has been Father's girlfriend for one year. Ms. Wiley testified that Father interacts well with her three children and that she has no reservations about letting Father take care of them when she works. Ms. Wiley further testified that Father handled himself well in a stressful situation involving her ex-husband. Ms. Wiley observed one meeting between J.S. and Father and noted that there had not been a confrontation. Ms. Wiley finally testified that she had never seen Father physically discipline his children and that there had never been an incident of domestic violence involving her. Ms. Wiley did testify that Father told her that J.S. had threatened him.

{¶30} Father testified he is a recent college graduate and owns his home. He is currently employed at Dave's Market. Father testified that he filed delinquency charges against J.S., which resulted in J.S. being placed in the

custody of CSB. Father insisted that he had never physically abused J.S., although he acknowledged occasional physical altercations with J.S.

{¶31} Father testified that he does not consume drugs or alcohol and does not smoke. Father further testified that he has complied with all aspects of the case plan, although CSB made it difficult. Father acknowledged that he made a mistake in forgetting to bring the letters he wrote to J.S. to his counseling sessions with CGFS. Father stated that he has been diligent in trying to visit with J.S. and persists despite J.S.'s refusal because he believes visitation is in J.S.'s best interest. Father disagreed with Father's psychological assessments. *Revised*

{¶32} Father testified as to a parenting skill he learned in parenting classes and explained that he would take time to calm himself before dealing with adversarial situations between he and J.S. should J.S. return home. Father testified that corporal punishment would not be an appropriate means to discipline J.S. Father further explained that the strained relationship between he and J.S. was aggravated by the presence of Father's other son, D.S., who was addicted to cocaine and a gang member. Father maintained that since D.S. has been placed in a PPLA, it would be now easier for him to parent J.S. Father acknowledged that he had heard about and was concerned about threatened conflict with J.S. should J.S. return home. Father indicated he would call the police if such violence occurred.

{¶33} Father testified that he is the best person to teach J.S. how to overcome obstacles because he did it himself. Father finally testified that he has changed since 2005, when J.S. was removed from the home. He maintained that he had learned to have more empathy towards his children and learned better self-control. He learned how to build self-esteem through encouragement and that it was his job to help them understand and process his children's feelings so that they can make good choices. Father indicated that the only stress he has in his life is the lack of a relationship with his children.

{¶34} J.S. spoke to the trial judge in chambers in the presence of J.S.'s probation officer. J.S. understood the purpose of the hearing was to determine if J.S. would be returning home or be placed in a PPLA. J.S. told the judge that he did not want to live with Father because of physical abuse by Father. In the past, Father had promised to stop hitting him and then would start again. J.S. believed that Father only wanted him home so Father could collect food stamp money. J.S. indicated that Father had beaten him, nailed his windows shut, and would not let him out of his bedroom in the past.

{¶35} J.S. indicated that were he to be placed in a PPLA, he did not want to visit Father, even in a supervised setting. J.S. indicated that he is doing better in foster care and has been working sporadically in construction with a goal of finding a part-time job with a regular schedule.

{¶36} Based on the foregoing, we find there to be clear and convincing evidence that it is J.S.'s best interest to be placed in a PPLA and that CSB made reasonable efforts to reunify Father with J.S.. J.S. is doing well in his current foster home and evidence at trial demonstrated a likelihood that physical violence would occur between J.S. and Father should he return home at this time. Moreover, J.S., who is sixteen years old, indicated that he does not want to go home and/or visit with his Father. Accordingly, we agree with the trial court that J.S. is unable to function in a family-like setting and must remain in residential or institutional care. R.C. 2151.419(C)(1).

{¶37} Father's second assignment of error is overruled.

{¶38} Each of Father's assignments of error is overruled and the judgment of the trial court is affirmed.

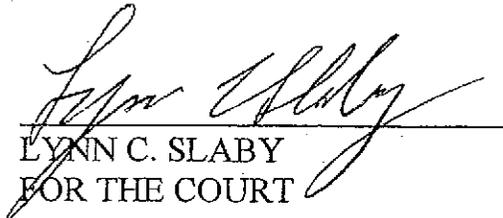
Judgment Affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.



LYNN C. SLABY
FOR THE COURT

WHITMORE, J.
DICKINSON, J.
CONCUR

APPEARANCES:

RICHARD P. KUTUCHIEF, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and PHILIP D. BOGDANOFF, Assistant Prosecuting Attorney, for Appellee.