

IN THE SUPREME COURT OF OHIO
Supreme Court Case Number 08-0407

IN RE: J.S.

On Appeal from the Summit
County Court of Appeals,
Ninth Appellate District
Court of Appeals No. 23842

MEMORANDUM IN OPPOSITION
STATE OF OHIO

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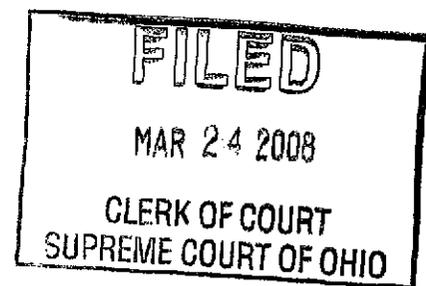


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PROPOSITION OF LAW I

THE JUVENILE COURT CAN PLACE A JUVENILE IN A PLANNED PERMANENT LIVING ARRANGEMENT (PPLA) WITHOUT A COMPLAINT BEING FILED AND WITHOUT AN ADJUDICATION OF DEPENDENCY.

LAW AND ARGUMENT

The Appellant challenges the procedure used in this case asserting that CSB could not place the Appellant in a Planned Permanent Living Arrangement (PPLA) because this case originated from a Juvenile Delinquency complaint and there was never a complaint indicating that John Sauers was a dependent or neglected child. He also contends that there never an adjudication of dependency and the Appellant was denied due process of law. First, CSB contends that the Appellant has waived any objection in this case because the Appellant never raised these issues in the Juvenile Court.

The Appellant never filed an objection or motion to dismiss the case in Juvenile Court asserting that the Court did not have the jurisdiction to issue a disposition of a Planned Permanent Living Arrangement (PPLA). He never raised a constitutional argument that the Ohio statutory procedure denied him due process of law. A parent must raise an issue in the trial court in order to preserve it for appeal. *In Re. A.C.*, 9th Dist. No. 23627, 2007-Ohio-5525 at ¶ 10-11. Here, the Appellant has waived any procedural issue regarding this disposition by failing to raise an objection in Juvenile Court or argue plain error in this Court.

Assuming this issue is properly before this Court, CSB contends that the Juvenile Court can place John Sauers in a Planned Permanent Living Arrangement (PPLA) without a complaint being filed and without an adjudication of Dependency. R.C. 2152.19 (A)(1) indicates that when a child is adjudicated delinquent, the Court may issue a dispositional order pursuant to R.C. 2151.353: "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;***. “R.C. 2152.19(A)(1) specifically authorizes a court to commit temporary custody of a child who has been adjudicated delinquent to a public children services agency such as SCDJFS.” *In Re Roberson*, 5th Dist. No. 2003CA00303, 2004-Ohio-4996 at ¶ 18.

Based upon the above statutory procedure, the Juvenile Court properly placed John Sauers in the temporary custody of CSB. Further, after he was in the temporary custody of CSB, R.C. 2151.415 authorizes the Juvenile Court to place John Sauers in a Planned Permanent Living Arrangement (PPLA). The Court clearly had jurisdiction to place John Sauers in a Planned Permanent Living Arrangement (PPLA) without a separate complaint of dependency being filed or a disposition of dependency.

Further, CSB contends that the Appellant was not denied due process of law because the Appellant was at the hearing when the Court ordered John Sauers into temporary custody and there was an evidentiary hearing before the Court granted the Planned Permanent Living Arrangement (PPLA). Due process includes a hearing upon adequate notice, assistance of counsel, and under most circumstances, the right to be present at the hearing. *In re Thompson* (Apr. 26, 2001), Franklin App. No. 00AP-1358. Here, before the Court placed John Sauers in a Planned Permanent Living Arrangement (PPLA), the Court held a dispositional hearing where Appellant was present, represented by counsel who cross-examined witnesses, and Appellant testified that he should be granted legal custody of John Sauers. The Appellant was not denied due process of law.

Finally, the Appellant alleges that CSB failed to use reasonable efforts to reunify Appellant with his child. However, because this issue involves the weight of the evidence, the CSB will address this issue in the second proposition of law where the Appellant challenges the weight and sufficiency of the evidence. The Appellant's first proposition of law is without merit and must be overruled.

PROPOSITION OF LAW II

A JUDGMENT SUPPORTED BY SOME COMPETENT, CREDIBLE EVIDENCE MUST BE AFFIRMED.

LAW AND ARGUMENT

The Appellant contends that the Juvenile Court committed error when placing John Sauer in a Planned Permanent Living Arrangement (PPLA) and that he should have been placed in the legal custody of the Appellant. "In a Planned Permanent Living Arrangement (PPLA), the Juvenile Court grants a children's services agency legal custody of a child without terminating the parent's parental rights. R.C. 2151.011(B)(27)." *In Re Whipple* (June 14, 2000), 9th Dist. No. 19902. R.C. 2151.415 (C)(1) sets forth the requirements that must be met before a child can be placed in a Planned Permanent Living Arrangement (PPLA):

C)(1) 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.

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

Here, the Juvenile Court indicated that John was 16 years old, had received intensive counseling, did not wish to live with the Appellant and that it was in John's best interest to place him in a Planned Permanent Living Arrangement (PPLA). (Juv. Ct. July 12, 2007 Order, P. 2). The Court found that he has psychological and mental needs where he is unable to function in a family-like setting: "He is in need of care that is beyond that which is provided in a family-like setting due to his severe behavioral problems. (Juv. Ct. July 12, 2007 Order P. 2). This court has indicated that it will apply the civil standard of review in custody cases and will 'presume that the findings of the trier of fact are correct since 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.'" *In Re J.H.*, 9th Dist. No. 07CA009168, 2007-Ohio-5765 at ¶ 11. A judgment supported by some competent, credible evidence must be affirmed. *Id.*

Here, John Sauers has psychological and mental problems based upon the past physical abuse suffered at the hands of the Appellant. John had a substance abuse problem and was in inpatient counseling for drug and alcohol abuse at Cornell Abraxis Agency. (T.pp. 85-87). His therapist, Shannon Imhoff, indicated that John he had been physically abused by the Appellant, that the Appellant had thrown ashtrays at him, locked him out of the house, and had banged John's head against his brother's head. (T.pp. 90-91). John indicated that he did not want his father to be part of his life and that if he went to live with his father, "I'll do whatever I have to do to get out of that situation." (T.p. 93). Ms. Imhoff stated that if John went to live with the Appellant that there was a possibility that John would hurt his father. (T.p. 96). John has a lot of stored animosity and resentment stored towards his father based upon the past physical abuse. (T.p. 97).

The Court conducted an in-chambers interview with John Sauers and he told the court that he did not want to live with the Appellant because he had beat him for over half his life: "No, I don't want to see him at all. He shouldn't have beat me when he beat me over half my life, and now he want to be all nice." (In camera H.T.P. 5). John is in a therapeutic foster home based upon his past behaviors and criminal charges. (T.p. 116). The parents in a therapeutic foster home are specifically trained for children with behavioral problems and who are involved in the criminal justice system. (T.p. 116).

Further, it is clearly in John's best interest to be placed in a Planned Permanent Living Arrangement (PPLA). John Sauers has indicated that he wants to be placed in a Planned Permanent Living Arrangement (PPLA). (T.p. 117) He has been referred to an independent living program and is scheduled to start this program in July. (T.p. 118). Both the Guardian Ad Litem and CSB worker, Danielle Hampton, believed that a Planned Permanent Living Arrangement (PPLA) was in John's best interest. (T.pp. 118, 184). John is doing extremely well in his current foster placement and he is attending school, off drugs and being more respectful. (T.p. 119). Further, there are no other alternative placements because there are no family members who can provide a family setting to John. (T.p. 117).

The Appellant contends that he should have been granted legal custody of his son. However, John's counselor believed that placement with Appellant was not possible because of the deep resentment that John felt toward his father. (T.p. 96). John's hate toward the Appellant is so deep that he refused to go to any visitations with the Appellant and shredded his letters. (T.p. 113). Further, although the Appellant went to parenting classes, the Appellant was not able to articulate any of the skills that he learned and gave improper "off the wall" answers at

parenting classes. (T.pp. 104-109). During counseling, he was unable to articulate any ways to discipline children other than corporal punishment. (T.p. 73).

Further, the Appellant was diagnosed with alcohol dependence, cannabis abuse and borderline personality disorder. (T.p. 67). The Appellant has a criminal history of abusing alcohol and has admitted that he becomes violent when he drinks alcohol. (T.p. 63). Appellant's counselor, Dr. Wood, indicated that the Appellant admitted that he used a paddle and belts to discipline his two boys. (T.p. 52).

Finally, the Appellant contends that CSB failed to use reasonable efforts to reunify the Appellant with his son. First, this Court has held that the reasonable efforts determination is not an issue that is to be litigated at the final dispositional hearing. *In Re K.W.*, 9th Dist. No. 23613, 2007-Ohio-3636 at ¶ 20. Further, there is no requirement in the Planned Permanent Living Arrangement (PPLA) statute that requires reasonable efforts by CSB to reunify the Appellant with his child. Further, assuming there is such a requirement, CSB did have a case plan in this case, referred the Appellant to counseling and parenting classes. However, the Appellant did not complete assignments set forth by his counselor. (T.p. 28). The Appellant's argument that CSB did not attempt to reunify Appellant with his child is without merit.

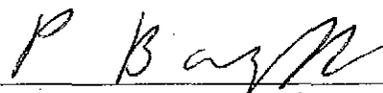
CSB contends that the Court's decision placing John in a Planned Permanent Living Arrangement (PPLA) is supported by the evidence and that Appellant's proposition of law is without merit and must be disregarded.

WHY LEAVE TO APPEAL SHOULD BE DENIED

Pursuant to the argument offered, the Appellee respectfully contends that leave to appeal should be denied, as Appellant has failed to present a substantial constitutional issue, or indicate this case is of great public or general interest.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition was sent by regular U.S. Mail to David Sauers, Appellant, Pro Se, 448 Champlain Street, Akron, Ohio 44306, on this 21st day of March, 2008.



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