

ORIGINAL

IN THE SUPREME COURT OF OHIO

14-2181

In re A.G. : On Appeal from the Lucas
 : County Court of Appeals,
 : Sixth Appellate District
 :
 : Court of Appeals
 : Case No. L-14-1079

MOTION OF APPELLANT PATSY GRANT FOR
 IMMEDIATE STAY OF COURT OF APPEALS' JUDGMENT

Philip M. Collins (0001354) (Counsel of Record)
 Ehren W. Slagle (0075351)
 Kathryn L. Traven (0080743)
COLLINS & SLAGLE CO., LPA
 21 East State Street, Suite 930
 Columbus, Ohio 43215
 Telephone: (614) 228-1144
 Fax: (614) 228-7619
 pcollins@collins-slagle.com

Bradley W. King, Esq. (0089459)
 Lucas County Children Services
 705 Adams Street
 Toledo, Ohio 43604
 Telephone: (419) 213-3328
 Fax: (419) 213-3328
 Bradley.king@co.lucas.oh.us

Counsel for Appellee, Lucas County
 Children Services

Counsel for Appellant, Patsy Grant

FILED
 DEC 18 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

**MOTION OF APPELLANT PATSY GRANT FOR
IMMEDIATE STAY OF COURT OF APPEALS' JUDGMENT**

Pursuant to S.Ct.Prac.R. 7.01(A)(3), Appellant Patsy Grant requests that this Court issue an order staying the portion of the November 3, 2011 judgment of the Lucas County Court of Appeals, Sixth Appellate District, that permits adoption proceedings to proceed pending appeal. All parties, including the minor child, A.G., will benefit from the status quo being maintained pending this appeal. In light of the nature of the proceeding being the termination of parental rights, as opposed to a money judgment, Appellant requests that no bond be ordered. A memorandum in support of this motion is set forth below. Pursuant to S.Ct.Prac.R. 7.01(A)(3)(a)(ii), a copy of the court of appeals' opinion and judgment entry is attached as Ex. A. A copy of the trial court decision is attached as Ex. B.



Philip M. Collins (0001354)
Ehren W. Slagle (0075351)
Kathryn L. Traven (0080743)
COLLINS & SLAGLE CO., LPA
21 East State Street, Suite 930
Columbus, Ohio 43215
Telephone: (614) 228-1144
Fax: (614) 228-7619
pcollins@collins-slagle.com
Counsel for Appellant, Patsy Grant

MEMORANDUM IN SUPPORT

I. Facts

Appellant incorporates by reference the Statement of the Case and Facts from her Memorandum in Support of Jurisdiction filed simultaneous herewith.

II. Argument

It is well established in Ohio that the permanent termination of parental rights is "the family law equivalent of the death penalty in a criminal case," and therefore, parents must be

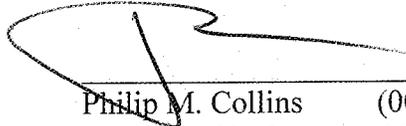
afforded every procedural and substantive protection the law allows. *In re M.M.*, 4th Dist. Meigs No. 14CA6, 2014-Ohio-5111, ¶ 43.

Parents have a constitutionally protected fundamental interest in the care, custody, and management of their children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). When the state intervenes to terminate the relationship between a parent and child, “it must provide the parents with fundamentally fair procedures.” *Santosky*, 455 U.S. at 753-54. Ohio courts have emphasized that, if the right to parent one’s own child is being contested by the state, parents “must be afforded every procedural and substantive protection the law allows.” *In re Hayes*, 79 Ohio St. 3d 46, 48, 679 N.E.2d 680 (1997) (quoting *In re Smith*, 77 Ohio App. 3d 1, 16, 601 N.E.2d 45 (1991)).

As matters currently stand, Appellant’s parental rights of A.G. have been terminated, Lucas County Children Services (“LCCS”) has custody of A.G., and LCCS is authorized to proceed with adoption proceedings for A.G. If Appellant is successful on this appeal, an additional hearing(s) will be necessary and Appellant will have the opportunity to prepare for and properly defend against the termination of her parental rights of A.G. and the awarding of permanent custody to LCCS. No harm will be done by staying adoption proceedings pending this appeal. To the contrary, interim adoption proceedings will only complicate the case if this Court overrules the November 3, 2011 judgment of the Lucas County Court of Appeals, Sixth Appellate District. All parties, including the minor child, A.G., will benefit by the status quo being maintained. A.G. can stay in the same custody and care as she currently does, but without the complicating factor of an interim adoption proceeding.

III. Conclusion

For the reasons set forth above, and pursuant to S.Ct.Prac.R. 7.01(A)(3), Appellant requests that this Court issue an order staying the portion of the November 3, 2011 judgment of the Lucas County Court of Appeals, Sixth Appellate District, that permits adoption proceedings to proceed pending appeal. All parties, including the minor child, A.G., will benefit from the status quo being maintained pending this appeal. In light of the nature of the proceeding being the termination of parental rights, as opposed to a money judgment, Appellant requests that no bond be ordered. Pursuant to S.Ct.Prac.R. 7.01(A)(3)(a)(ii), a copy of the court of appeals' opinion and judgment entry is attached as Ex. A. A copy of the trial court decision is attached as Ex. B.

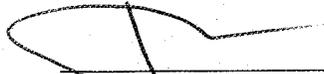


Philip M. Collins (0001354)
Ehren W. Slagle (0075351)
Kathryn L. Traven (0080743)
COLLINS & SLAGLE CO., LPA
21 East State Street, Suite 930
Columbus, Ohio 43215
Telephone: (614) 228-1144
Fax: (614) 228-7619
pcollins@collins-slagle.com
Counsel for Appellant, Patsy Grant

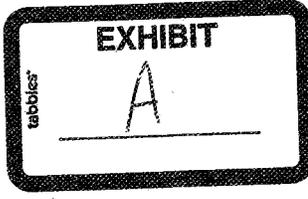
CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing *Motion of Appellant Patsy Grant for Immediate Stay of Court of Appeals' Judgment* has been mailed, postage prepaid, to the following on this 18th day of December, 2014:

Bradley W. King, Esq.
Lucas County Children Services
705 Adams Street
Toledo, Ohio 43604
Counsel for Petitioner-Appellee, Lucas County Children Services



Philip M. Collins



FILED
COURT OF APPEALS

2014 NOV -3 P 1:01

COMMON PLEAS COURT
BERNIE OULTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In re A.G.

Court of Appeals No. L-14-1079

Trial Court No. JC 12222552

DECISION AND JUDGMENT

Decided:

NOV 08 2014

* * * * *

Tim A. Dugan, for appellant.

Bradley W. King, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, mother, appeals the April 9, 2014 judgment of the Lucas County Court of Common Pleas, Juvenile Division, which terminated her parental rights with respect to A.G. and awarded permanent custody to Lucas County Children Services (“LCCS”). The father has not appealed the trial court judgment. For the reasons set forth herein, we affirm.

E-JOURNALIZED

1.

NOV -3 2014

{¶ 2} A.G. was born in 2006, and has five older half-siblings. The father of A.G. is T.W., and the father of her half-siblings is C.A. LCCS had been involved with the family for several years. In March 2012, appellant was hospitalized due to severe migraines and mental health concerns. LCCS filed a complaint in dependency and neglect and motion for a shelter care hearing for appellant's five minor children due to its belief that the children were left with an inappropriate caregiver, their maternal great-grandmother. The complaint further chronicled LCCS' prior involvement with the family which included issues with supervision, discipline, and domestic violence. At the time the complaint was filed, fathers C.A. and T.W. were incarcerated.

{¶ 3} Four minor children were placed in foster care (the 17 year old was placed with relatives) and a case plan was filed with the court detailing the various services for the family and listing a goal of reunification. In June 2012, A.G. and her sister were placed in their great-aunt, L.G., and uncle, J.C.'s home.

{¶ 4} In June 2013, the children were removed and A.G.'s sibling went to live with C.A., her father. A.G. was placed in foster care. On July 29, 2013, C.A. filed a motion for legal custody of his three minor children and of A.G. Later, C.A. withdrew his motion as to A.G. A hearing was held on the motion over several days and on January 24, 2014, legal custody of the three minor children was awarded to C.A.

{¶ 5} On January 29, 2014, LCCS filed a motion for permanent custody of A.G. The motion stated that A.G. had been in temporary custody of the agency for 12 or more

of the last 22 months, that reasonable efforts were made to reunify her with appellant, and that it was in her best interest to terminate appellant's parental rights.

{¶ 6} On February 3, 2014, A.G.'s great-aunt and uncle filed a motion to intervene in the action and for legal custody of A.G. The two were represented by appellant's attorney although, at the time of the permanency proceedings, the attorney claimed that he no longer represented the mother. The court granted the motion. On February 26, 2014, prior to the commencement of trial, a discussion was held regarding the attorney's conflict of interest as appellant's former counsel in representing the great-aunt and uncle. Despite claims that the conflict was waived by the parties, the court concluded that because the great-aunt and uncle would have to use information the attorney got from the mother against her, the conflict could not be waived. At that point, the court found that the attorney could not represent the interveners and appointed new counsel for appellant. The court informed the great-aunt and uncle that they either needed to find new counsel or proceed pro se.

{¶ 7} The case proceeded to trial on March 18 and 19, 2014, and March 20 and 24, 2014, and the following evidence was presented. The family's caseworker, Keely Gray, testified. Gray described appellant's case plan as requiring that she participate in parenting classes, domestic violence counseling, and mental health services. There was also counseling services for the children. Gray testified that appellant completed the case plan services but that she had not progressed. Specifically, Gray stated that appellant had completed parenting classes "a few times" but was still making "inappropriate" decisions.

Gray cited examples including appellant's belief that her mother could care for the children despite her own mental health issues and appellant's desire to file for guardianship over her; also, her involvement with a man with a history of domestic violence. When further questioned about services, Gray testified that even though appellant completed the parent-child interactive program ("PCIT"), they requested that she go through it again. Appellant refused.

{¶ 8} Gray then testified about the progression of appellant's visitation with the children following their removal from her custody. Appellant initially had level one, or the most restrictive, supervised visitations which take place at the agency. Level two visitation, also at the agency but in a more intimate, less restrictive setting, began in November 2012. Gray testified that appellant proceeded to level three visits, or visits at her home, and stayed there until June 2013, when one of her children ran away.

According to Gray, appellant failed to properly monitor the child and then, once she realized he was missing, failed to properly respond. The child was returned a few hours later by two unknown men in a vehicle appellant recognized; she did not question the men or get the license plate of the vehicle.

{¶ 9} Gray testified that for just under one year, appellant's aunt and uncle had custody of A.G. and a sibling. There were concerns about the couple's ability to get the children to counseling and other appointments due to their work schedules. They gave up temporary custody in June 2013. Appellant had also complained that the children were being physically disciplined in the home. According to Gray, once A.G. was placed in

foster care she was toilet trained within days, began talking more, and her overall behavior and health improved.

{¶ 10} Gray stated that in the fall of 2013, while appellant was on level one visitation, the visits were very chaotic. The children were loud and disruptive and Gray stated that she received several complaints from family visit coaches and supervisors. More concerning was that LCCS employees continued to hear her discussing details of the case with the children. Gray testified that she believes that it is in A.G.'s best interest to award custody to LCCS.

{¶ 11} During cross-examination, Gray was questioned about the fact that appellant had successfully completed all of her case plan services and that she is in ongoing mental health and domestic violence services. Gray was further questioned about appellant's reluctance to attend PCIT; she acknowledged that appellant did, in fact, attend a PCIT class in February 2014. It was discussed that a prior PCIT class involved appellant's older children, not A.G. The February classes were discontinued due to LCCS' pursuit of permanent custody.

{¶ 12} LCCS employee, Michelle Penn, testified that she was the visit coach caseworker for appellant from August 2012 through July 2013. Penn testified that during visits with her five children, appellant would often speak negatively about the older children's father. Appellant would also speak negatively about the foster parent. Penn acknowledged that appellant met the children's needs but that, despite her repeated attempts, appellant was not able to filter her conversations with the children. During

cross-examination, Penn acknowledged that appellant was open to her instruction and that she did improve during the course of their work together.

{¶ 13} Annette Schlegel, an LCCS family visit monitor, testified that she supervised appellant's level one and two visitations. Schlegel stated that she had to redirect appellant when appellant spoke negatively about the children's father. LCCS security officer, Courtney Mowery, testified that she supervised level one visitation. Mowery stated that she has supervised over 20 of appellant's visitations. Mowery testified that on two occasions appellant, against the visitation rules, attempted to tape record a visitation.

{¶ 14} A.G.'s foster mother, B.C., testified next. B.C. stated that when A.G. arrived at her home, at age three, she was not toilet trained and that, after about one week she was using the toilet. After one month she was dry overnight. Regarding her speech, B.C. stated that A.G. was "unintelligible" when she arrived at her home but that after a few weeks her speech improved dramatically. B.C. surmised that the improvement was largely due to being around other children. B.C. testified that she observed appellant involving A.G. in what she believed to be "adult" conversation regarding the LCCS case. During cross-examination, B.C. acknowledged that some children take longer to toilet train than others.

{¶ 15} LCCS supervisor, Holly Mangus, testified that appellant's family was first brought to her attention in 2010 regarding alleged sexual abuse of a younger child perpetrated by an older child. The alleged perpetrator was placed outside the home and

case plan services were offered. The case was reopened in August 2011, and remained an open, noncustody case until March 2012, when the children were removed. Mangus testified that the children were removed because appellant had been admitted to the hospital and the children were left in the care of an older child and maternal grandmother. Mangus stated that the older child had gotten into a physical altercation with a younger child and that the grandmother had “significant” mental health issues. In fact, appellant had been looking into filing for guardianship over her mother.

{¶ 16} Mangus testified that once the children were placed in foster care their health and behavior improved. Mangus stated that she felt that the improvements were due to the removal of the “environmental stressors” in their lives and placement in structured and secure environments. Mangus stated that A.G. was in foster care while the three older siblings had been placed with their father.

{¶ 17} Mangus, too, testified about the PCIT program. Mangus stated that the program was proposed for appellant and A.G. in September 2013, but that appellant refused to participate. Mangus acknowledged that appellant had participated with a different child but stated that the program was focused on one child at a time. As testified to previously, appellant went from level three visitation down to level one due to her son running away while in her care, her inappropriate conversations with her children, and the recording devices found on her during visits.

{¶ 18} Mangus stated that appellant had participated in “several” services through LCCS but that she has failed to make any significant progress. She testified that the

agency had made extensive efforts to reunify the family. Finally, Mangus stated that the agency was recommending permanent custody to LCCS for A.G. in the hopes of her being adopted.

{¶ 19} C.A., father of A.G.'s half-siblings, testified next. C.A. testified that he withdrew his motion for custody of A.G., not his biological child, due to harassment by appellant. C.A. testified that during the summer of 2013, when he had visits with the children in his home, appellant would continually drive by the house and call the police and say that he was abusing the children. C.A. stated that this happened 16 to 20 times. C.A. testified that he was awarded legal custody of the three minor children in January 2014.

{¶ 20} C.A. stated that he had concerns about the past history of the children, the "negativity," manipulation, and lying. He testified that initially when the children came home from visitation with appellant they were upset and acting out. C.A. testified that the children figured out that appellant was not telling the truth and became more relaxed. C.A. stated that he did not feel that appellant should parent A.G.

{¶ 21} C.A. was cross-examined about his criminal history. C.A. admitted that he was in prison for drug trafficking when the LCCS case began. He also admitted that he had been in prison three times. C.A. stated that he and appellant have five children together ranging in age from 20 to 7. C.A. testified that for 10 of the 20 years he had known appellant, he was in prison.

{¶ 22} LCCS called A.G.'s great-uncle, J.C., to testify. He stated that he and his wife, L.G., had custody of A.G. from June 2012 through June 2013. J.C. testified that he and his wife would want to adopt A.G. if appellant's parental rights were terminated. J.C. stated that he saw no reason why A.G. should not be returned to appellant because she completed the required programs. J.C. was then questioned about his affidavit made in connection with his motion to intervene for legal custody of A.G. where it stated that appellant was an unfit parent. J.C. stated that he failed to read the affidavit before signing it and did not remember that statement.

{¶ 23} During cross-examination, J.C. denied that they requested that A.G. and her sister be removed from the home. J.C. stated that he only requested respite care when they were unable to take the girls on a planned vacation. J.C. also clarified that he and L.G. are not legally married, but he believes they are common law spouses and have been together for 29 years.

{¶ 24} The children's guardian ad litem ("GAL"), Joan Crosser, testified that when the case was opened, she had concerns about appellant's mental health. Though never diagnosed, Crosser also felt that the mother had the characteristics of Munchausen by Proxy, the psychological condition where a caregiver fabricates or induces health problems in those in their care. Crosser's concern stemmed from the fact that each child had multiple diagnoses and the conditions that were identified were based, largely, on subjective histories. These concerns were also raised by a treating pediatrician. Once the children were placed in foster care nearly all of the conditions resolved. Crosser also

expressed concern that appellant had Munchausen Syndrome based on her own excess of medications and medical treatment. As to appellant's general mental health, Crosser stated that she had a history of sexual abuse and physical traumas.

{¶ 25} Crosser testified regarding the steps taken by LCCS to reunify appellant with her children. Crosser stated that appellant advanced in her services, but that she had trouble setting and remaining in the proper mother and child roles. Specifically, appellant had a "significant" inability to converse in an age-appropriate manner with her children. Crosser then chronicled the progression and regression of appellant's visitation. Crosser stated that she does not feel that appellant is able to protect A.G. and that it is in her best interests that LCCS be awarded permanent custody.

{¶ 26} On April 9, 2014, the trial court granted LCCS' motion for permanent custody finding that appellant failed to remedy the conditions which caused the removal of the children, has chronic mental illness, lost custody of three of her children, and that A.G. had been in custody of LCCS for 12 or more months of a consecutive 22-month period. The trial court also terminated the father's parental rights and denied the great-aunt and uncle's motion for legal custody. This appeal followed.

{¶ 27} Appellant now raises five assignments of error for our review:

- 1) Appellant received ineffective assistance of counsel.
- 2) Appellant was forced to go to trial without her privately retained counsel who was never withdrawn by the trial court.

3) The cumulative effect of the errors committed at trial prevent[ed] appellant from having a fair trial.

4) The decision to terminate appellant's parental rights fell against the manifest weight of the evidence.

5) LCCS failed to demonstrate reasonable efforts to prevent the continued removal of A.G.

{¶ 28} In her first assignment of error, appellant argues that her prior counsel's ineffectiveness created a conflict of interest and prevented her from having proper representation at trial. Specifically, her prior counsel's act of representing the intervening great-aunt and uncle caused the appointment of new counsel too close to trial. Appellant also contends that counsel was ineffective by failing to request a continuance.

{¶ 29} The right to counsel guaranteed in juvenile proceedings by R.C. 2151.352 and Juv.R. 4, includes the right to the effective assistance of counsel. *In re. Heston*, 129 Ohio App.3d 825, 827, 719 N.E.2d 93 (1st Dist.1998); *Jones v. Lucas Cty. Children Servs. Bd.*, 46 Ohio App.3d 85, 546 N.E.2d 471 (6th Dist.1988). "Where the proceeding contemplates the loss of parents' 'essential' and 'basic' civil rights to raise their children, * * * the test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody." *Heston* at 827. Thus, to prevail on a claim of ineffective assistance of counsel the appellant must show that counsel's performance fell below an objective standard of reasonableness and that prejudice arose from such performance. *State v. Reynolds*, 80

Ohio St.3d 670, 674, 687 N.E.2d 1358 (1998), citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶ 30} Carefully reviewing the court proceedings, we agree with the trial court's action to remove prior counsel from the proceedings due to the nonwaivable conflict of interest. We cannot say, however, that appellant was prejudiced by the appointment of new counsel or her ability to prepare for trial. Counsel vigorously cross-examined witnesses, made several objections, requested discovery and subpoenaed multiple witnesses. After conferring with appellant, counsel ultimately decided not to call the witnesses.

{¶ 31} Regarding counsel's failure to request a continuance, at the February 26, 2014 pretrial, the court did state that it could not extend the trial date because the case had been pending since March 2012, and it would lose jurisdiction. Appellant's prior attorney indicated that he would make certain that new counsel was prepped as to the case specifics in order to be prepared for trial. Appellant's new trial counsel was not at this pretrial.

{¶ 32} At the March 7, 2014 pretrial, counsel indicated to the court that she had been appointed one week ago. She did not request a continuance. She also set forth her witnesses list which included appellant's therapist and her doctor, various clinicians who had worked with appellant, and three family friends. At that time counsel also raised an issue regarding appellant's visitation with the three children in C.A.'s custody. Counsel

also questioned the LCCS attorney in order to identify employees who had been assigned to appellant's case.

{¶ 33} Juv.R. 23 provides that “[c]ontinuanes shall be granted only when imperative to secure fair treatment for the parties.” Further, “[t]he grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge.” *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981), syllabus. Counsel did not request a continuance at that time thus, we cannot be certain whether the court would have granted it or not. Even assuming that counsel should have made the request, there is no indication of how counsel would have been better prepared for trial. As stated above, counsel thoroughly cross-examined the parties and subpoenaed witnesses which, after consulting with appellant, she decided not to call.

{¶ 34} Accordingly, we cannot say that counsel was ineffective by failing to request a continuance. Appellant's first assignment of error is not well-taken.

{¶ 35} In appellant's second assignment of error, she argues that she was prejudiced by proceeding to trial without her privately retained counsel. As noted by both parties, counsel created a conflict of interest by representing intervenors, J.C. and L.G., in support of their motion for custody of A.G. Appellant claims no prejudice caused by the removal of former counsel, only that the fact was not journalized. Appellant's second assignment of error is not well-taken.

{¶ 36} In her third assignment of error, appellant contends that the cumulative errors set forth in her first and second assignments of error prevented her from receiving

a fair trial. The only conceivable error set forth above was prior counsel's attempt to represent A.G.'s great-aunt and uncle at the permanent custody hearing. Thus, because there were no multiple errors, there can be no cumulative error. *See State v. Hemsley*, 6th Dist. Williams No. WM-02-010, 2003-Ohio-5192, ¶ 32, citing *State v. DeMarco*, 31 Ohio St.3d 191, 509 N.E.2d 1256 (1987), paragraph two of the syllabus. Appellant's third assignment of error is not well-taken.

{¶ 37} In appellant's fourth assignment of error, she argues that the trial court's decision to terminate her parental rights was not supported by clear and convincing evidence. In order to award permanent custody to a public children's services agency, a court must find under R.C. 2151.414(B)(1)(a), where the child is not orphaned or abandoned, that the child "cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents." Alternatively, under R.C. 2151.414(B)(1)(d), the court must find that the child has been in the temporary custody of a public children services agency for "twelve or more months of a consecutive twenty-two-month period * * *." The trial court must also determine that an award of permanent custody to the agency is in the child's best interests. R.C. 2151.414(B)(1).

{¶ 38} R.C. 2151.414(E)(1)-(16) lists factors setting forth specific parameters under which a trial court may terminate parental rights. *In re William S.*, 75 Ohio St.3d 95, 99, 661 N.E.2d 738 (1996). Under R.C. 2151.414(E), if the court determines by clear and convincing evidence that 1 of the 16 factors exists as to both parents, the court "shall enter a finding that the child cannot be placed with either parent within a reasonable time

or should not be placed with either parent.” R.C. 2151.414(D) lists relevant factors to be considered by the court in determining whether an award of permanent custody to a public children’s services agency is in the best interests of the child.

{¶ 39} As to appellant, the trial court based its decision to terminate parental rights on findings, by clear and convincing evidence, of the existence of three factors under R.C. 2151.414(E). The court found the existence of factors R.C. 2151.414(E)(1), (2), and (16). The court also found that an award of permanent custody to LCCS was in the best interest of the child under R.C. 2151.414(D).

{¶ 40} Appellant argues that the evidence does not support the trial court’s finding that A.G. could not be placed with her in a reasonable time. Appellant states that she had been progressing with mental health counseling, was compliant with her case plan services, and was meeting the needs of her children. Appellant argues that mere “inappropriate conversations” with her children about her ex-spouse was insufficient to terminate her parental rights.

{¶ 41} In its judgment, the court found that A.G. could not be placed with appellant because despite years of therapy and medication management, appellant had made no real progress in improving her mental health or the behaviors which caused the removal of the children. R.C. 2151.414(E)(1). Specifically, the court found that appellant continued to have inappropriate conversations and interrogations with her children despite intervention by the caseworker, the supervisor, the GAL, and two visit coaches. The court further found that the chaotic interactions between appellant and her

child were detrimental. The court noted that appellant refused to participate in the PCIT program with A.G. until after LCCS filed its motion for permanent custody. Finally, the court found that appellant violated the visitation rules on two occasions.

{¶ 42} Under R.C. 2151.414(E)(2), the court found that appellant's mental illness was so severe that she was not able to provide a home for A.G. at the time of the hearing or within one year of the hearing. The court noted appellant's diagnoses of post-traumatic stress disorder and major depressive disorder. The court stated that the children had multiple health conditions while in appellant's care and improved significantly when removed from the home.

{¶ 43} Under R.C. 2151.414(E)(16), the court found that appellant lost legal custody of three of A.G.'s siblings approximately one month prior to the permanent custody motion being filed.

{¶ 44} Finally, under R.C. 2151.414(D)(1)(c)(d), the court found that A.G. had been in temporary custody of LCCS for 12 of a consecutive 22-month period and that she needs legally secure placement. The court noted that both the caseworker and the GAL testified that A.G. should be allowed to grow up in a house free of chaos, manipulation and negativity. The GAL recommended that a permanent custody award to LCCS was in A.G.'s best interest.

{¶ 45} The court then noted that LCCS exercised reasonable efforts to avoid the removal and continued removal of A.G. from appellant's home and that it exhausted the

case plan services available to appellant. Despite this, appellant failed to show significant progress.

{¶ 46} Upon our independent review of the record, we agree that clear and convincing evidence exists supporting the court's finding of the above factors. Appellant's fourth assignment of error is not well-taken.

{¶ 47} Appellant's fifth and final assignment of error argues that LCCS failed to make reasonable efforts to prevent the continued removal of A.G. from the home. In a reasonable efforts determination, the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute. *In re Savannah J.*, 6th Dist. Lucas No. L-08-1123, 2008-Ohio-5217, ¶ 40, citing *In re Myers*, 4th Dist. Athens No. 02CA50, 2003-Ohio-2776, ¶ 18. A "reasonable effort" is an "honest, purposeful effort, free of malice and the design to defraud or to seek an unconscionable advantage." *In re Weaver*, 79 Ohio App.3d 59, 63, 606 N.E.2d 1011 (12th Dist.1992).

{¶ 48} Reviewing the trial testimony, multiple LCCS employees testified to the services provided to appellant and the case plans filed with the court provide further evidence. LCCS supervisor, Holly Mangus, testified as to the extensive services provided to appellant and that there were no other referrals that they could have made. Thus, we find that the record supports a finding that the agency made reasonable efforts. Appellant's fifth assignment of error is not well-taken.

{¶ 49} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

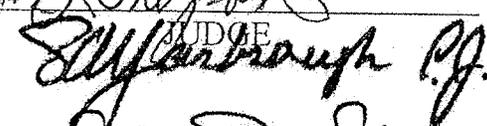
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

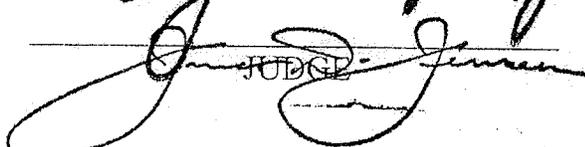
Mark L. Pietrykowski, J.

Stephen A. Yarbrough, P.J.

James D. Jensen, J.
CONCUR.

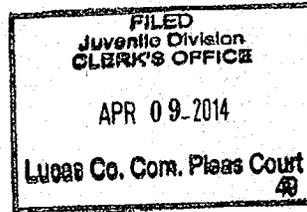


JUDGE


JUDGE


JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.



IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

JUVENILE DIVISION

IN THE MATTER OF:

Angalena Grant, DOB 02/05/2010

JC 12222552

**THE HONORABLE PETER M.
HANDWORK
(SITTING BY ASSIGNMENT)**

JUDGMENT ENTRY

This matter came on for trial on March 18, 19, and 20, 2014, for a Motion for Permanent Custody filed January 31, 2014 by Lucas County Children Services (hereafter "LCCS"). Present for the hearing were Patsy Grant, Mother; Atty. Ann Baronas, counsel for Mother; Atty. Jaime Agnew, counsel for Thomas Watters, Father; Atty. Joan Crosser, guardian ad litem; Keely Gray, LCCS caseworker; and Bradley W. King, counsel for LCCS. The Court finds that the parties were properly served and notified and that it has proper jurisdiction of the subject matter and of the parties herein. Although duly served and notified, Mr. Watters failed to appear.

In preliminary matters, counsel for Mr. Watters asked to withdraw and the motion was granted, based upon a recitation into the record that she had limited contact with her client and was advised that Mr. Watters was not interested in contesting LCCS' motion, which supported a finding by this Court that Father waived his right to counsel by his actions.

Also present were James Clark and Lola Guillermo, who were made parties to the case pursuant to their "Motion to Intervene and for Legal Custody" filed February 3, 2014. In preliminary matters, the Court instructed Mr. Clark and Ms. Guillermo that, because they had not obtained legal representation, they themselves could present a case and cross-examine witnesses. Mr. Clark and Ms. Guillermo were not present for the entirety of the proceedings, chose not to conduct cross-examination, but did make a statement in support of their motion.

Upon consideration of the evidence, the witness testimony, the exhibits, the adjudication, the judgement entries and pleadings and all other matters of record, the Court finds, by clear and convincing evidence that, under RC 2151.414(B)(1)(a), the child cannot be placed with either parent within a reasonable time and under RC 2151.414(B)(1)(d), the child has been in the temporary custody of one or more public children service agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period and should not be placed with either parent.

The Court further finds under RC 2151.414(D), by clear and convincing evidence, that it is in the best interests of the child to grant permanent custody to LCCS.

The Court further makes the following findings:

Under ORC RC 2151.414(E)(1), that following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by LCCS to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the children's home. The Court finds that, despite spending years in services including therapy and medication management, Ms. Grant has made no

significant progress in improving her mental health. The Court further finds that Ms. Grant failed to improve her behaviors that originally caused removal of the child.

The Court further finds that Ms. Grant continuously has inappropriate conversations with her children. These conversations include adult subject matter not suitable for a child. The Court also finds that Ms. Grant has interrogated her children in a disruptive and inappropriate manner. The Court further finds that the case worker, the case worker supervisor, the guardian ad litem, and two LCCS visit coaches have worked extensively with Ms. Grant on having appropriate conversations. Ms. Grant has participated in case plan services, one-on-one parent coaching, and counseling and still displays highly inappropriate behavior. The Court finds that, despite constant redirection, Ms. Grant has not remedied the conditions that initially caused removal.

The Court finds that Ms. Grant's interaction with Angalena and her siblings is chaotic. The Court finds that Ms. Grant has engaged in multiple services and yet has failed to interact effectively and appropriately with her children. The Court finds that Ms. Grant's behaviors have a detrimental effect on the child.

Further, the Court finds that Ms. Grant was offered parent-child interactive therapy (PCIT) but refused to participate. The Court finds that Ms. Grant was offered the service for several months and only agreed to participate after LCCS filed its motion for permanent custody. The Court finds that Ms. Grant constantly refused to participate in the service despite several recommendations from LCCS that she do so.

The Court also finds that Ms. Grant behaved inappropriately during her visits with Angalena and her siblings. Ms. Grant violated LCCS' rules of visitation on more than one

occasion. Further, the Court finds that Ms. Grant's behaviors were so inappropriate during visitation that LCCS had to restrict her visit time in the interest of protecting the children.

The Court finds that Ms. Grant has not internalized what has been presented to her during her case plan services. Ms. Grant continues to be disruptive, to behave inappropriately, and is unable to protect her child.

Further, the Court finds under O.R.C. 2151.414(E)(2) that a chronic mental illness, chronic emotional illness, or chemical dependency of the mother is so severe that it makes the mother unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the Court holds the hearing. Specifically, the Court finds that Ms. Grant suffers from a diagnosis of post-traumatic stress disorder and major depressive disorder. Further, the Court finds that Ms. Grant's mental illness prevents her from keeping her child safe. Ms. Grant has failed time and time again to recognize that her behavior places the child at risk of harm. The Court further finds that Ms. Grant failed to make any substantial progress in providing a safe environment for her child, despite clear direction from LCCS and her various service providers.

The Court further finds that Ms. Grant was hospitalized due to concerns for her mental health at the outset of the case. Ms. Grant continues to suffer from poor mental health and has failed to make any substantial progress. The Court finds that Ms. Grant's mental health contributes to her failure to protect her child and her failure to behave appropriately with her child. The Court finds that Ms. Grant's mental health status has inhibited her ability to parent her child and cannot be remedied within one year.

Additionally, the Court finds that Ms. Grant's children were diagnosed with several

medical conditions and were taking several prescription medications while in her care. The Court finds that, once Angalena and her siblings were removed from her care, they ceased suffering from their various medical ailments almost immediately. The Court finds that Angalena and her siblings showed extraordinary improvement upon removal from Ms. Grant's care.

The Court further finds under O.R.C. 2151.414(E)(4) that Mr. Watters has demonstrated a lack of commitment towards his child by failing to regularly support, visit, or communicate with his child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for his child. The Court finds that Mr. Watters is aware of his child's involvement with LCCS. Still, the Court finds that Mr. Wilson has shown no interest in caring for his child, has not made any financial contributions to the well-being of his child, has not provided emotional support for his child, and has never communicated with his child.

The Court also finds that under O.R.C. 2151(414)(E)(12) Mr. Watters was incarcerated at the time of the filing of the motion for permanent custody and the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

The Court also finds that under O.R.C. 2151(414)(E)(13) Mr. Watters is repeatedly incarcerated, and the repeated incarceration prevents him from providing care for the child.

Further, the Court finds under O.R.C. 2151.414(E)(16) that it is significant that Ms. Grant lost legal custody of three siblings to Angalena approximately one month prior to LCCS' motion for permanent custody. The Court finds that Ms. Grant has been unable to effectively parent her children and cannot provide a suitable, stable home for them. The Court finds that Ms. Grant's

has consistently failed to demonstrate the ability to appropriately parent her children on a day-to-day basis despite involvement with LCCS and various service providers for several years.

Addressing the specifics of its best-interest finding, the Court, having considered the requirements of O.R.C. 2151.414(D)(1)(c),(d), finds that 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. Further, the Court finds that the child's need for a legally secure permanent placement is great and such placement cannot be achieved without a grant of permanent custody to LCCS. Both the case worker and the guardian ad litem testified that Angalena needs to be able to grow and thrive in a home free from chaos, manipulation, and negativity. The foster parent for Angalena testified that Angalena should be allowed to live a normal, happy life. The Court finds that Angalena has shown great improvements since being removed from the care of Ms. Grant, and that, considering her tender age, a permanent home should be found as soon as possible.

Joan Crosser, the guardian ad litem, testified concerning the best interest of the child. Ms. Crosser stated she had been working with Ms. Grant for the entirety of the case. She also testified that Ms. Grant has never shown improvement despite the numerous case plan services she was offered and participated in. She further testified to the conditions of the children before and after they were in their mother's care. Ms. Crosser testified that the children were believed to suffer from many medical ailments and were on a number of prescription drugs prior to their removal. She stated that, almost miraculously, once the children were out of their mother's care, the medical conditions and prescription drugs almost completely subsided. She also testified that Ms. Grant has never been able to implement the tools learned in case plan services in order to

successfully parent her children. Ms. Crosser recommended that, upon completing her investigation as the guardian ad litem, permanent custody of Angalena should be awarded to LCCS and that such an award was in Angalena's best interest.

The Court finds that LCCS has exercised reasonable efforts to avoid removal and continued removal of this child from the home, having assisted Ms. Grant in this case to identify problems that interfered with her parenting and offered services such as parenting and mental health treatment. The Court finds that LCCS exhausted the case plan services available to Ms. Grant, and still she failed to show significant progress. The Court finds that LCCS attempted to contact Mr. Watters but that Mr. Watters expressed disinterest in actively participating in the case. LCCS has also exercised reasonable efforts to finalize a permanency plan, by filing and prosecuting this action for permanent custody.

The Court further finds that the motion for legal custody filed by the maternal relatives James Clark and Lola Guillermo is found not well-taken and denied. The Court finds that Mr. Clark and Ms. Guillermo continuously failed to properly care for Angalena and her sibling. The Court finds that the relatives regularly failed to bring the children to their various medical and counseling appointments. The Court finds that LCCS transportation and the case worker personally began transporting the children to their respective appointments. Further, the Court finds that there were reports of physical abuse by the relative caregivers. The Court finds that Mr. Clark made a statement to LCCS that he and Ms. Guillermo were no longer able to care for the children.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that permanent custody of Angalena Grant, born February 5, 2010, is awarded to Lucas County Children Services for adoptive placement and planning. All parental rights in and to the child is hereby terminated,

except the right to appeal.

IT IS FURTHER ORDERED that all Court appointed attorneys are hereby relieved of their duties and are hereby withdrawn as counsel of record in this case.

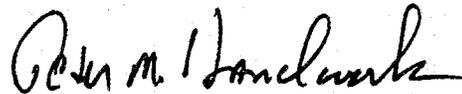
IT IS FURTHER ORDERED that the motion for legal custody filed by James Clark and Lola Guillermo is denied.

IT IS FURTHER ORDERED that the guardian ad litem shall remain in place until such time as the child is adopted.

IT IS FURTHER ORDERED that the Case Plan filed with the goal of adoption is approved.

IT IS FURTHER ORDERED that Toledo Public Schools shall be responsible for the costs of educating the child based upon the parent's address at the time of removal of: 2612 Green Valley, Toledo, Ohio 43614 until such time as the child's adoption is finalized.

IT IS FURTHER ORDERED that all parties are hereby notified of their right to Appeal; that if any one wishes to file an Appeal, he or she must file a notice of appeal within thirty (30) days of the date when this judgment is entered on the journal; that if either parent wishes to have court-appointed counsel to assist in filing said notice of appeal, he or she must promptly notify the Court in writing so that an attorney can be timely appointed to meet the 30-day deadline for filing an appeal.



JUDGE PETER M. HANDWORK

JOURNALIZED
Date 4-9-14
JE elc

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

JUVENILE DIVISION

IN THE MATTER OF:

Angalena Grant, DOB 02/05/2010

JC No. 12222552

**PERSONAL IDENTIFICATION
INFORMATION SHEET**

FOR COURT AND ATTORNEY USE
ONLY. NOT FOR DISSEMINATION TO
OTHER PARTIES

****TO THE CLERK:** PLEASE CIRCULATE COPIES OF THE SIGNED JUDGMENT ENTRY,

BUT DON'T INCLUDE THIS ADDRESS PAGE

cc:

Bradley W. King
Lucas County
Children Services
705 Adams Street
Toledo, Ohio 43604

Ann Baronas
43 S. Huron St.
Toledo, Ohio 43604-5606

Patsy Grant
1208 4 Season Dr.
Toledo, OH 43615

Thomas Watters
PO Box 1000
FCI Milan -inmate#43980-060
Milan, MI 48160

Jaime Agnew
1144 S. Detroit
P.O. Box 140215
Toledo, OH 43614

Joan Crosser
P.O. Box 60436
Rossford, OH 43460-
0436

Lola Guillermo
648 Northfield Dr.
Maumee, OH 43537

James Clark
648 Northfield Dr.
Maumee, OH 43537