

IN THE SUPREME COURT OF OHIO

ORIGINAL

In re: T.B., et al.

On Appeal from the
Lucas County
Court of Appeals
6th Appellate District

Court of Appeals Case No. L-14-1122

15 - 0140

MEMORANDUM IN SUPPORT OF JURISTITION
OF APPELLANT
LATAGIA COPELAND

Latagia Copeland
3149 N. Detriot Ave.
Toledo, OH 43610
Ph: 419-283-6200
lcopeland@mercycollege.edu

Jill Wolff
Lucas Co. Children Services
705 Adams St.
Toledo, OH 43604
Ph:419-213-3200
Jill.Wolff@co.lucas.oh.us
Attorney for Appellee LCCS

RECEIVED

JAN 27 2015

CLERK OF COURT
SUPREME COURT OF OHIO

FILED

JAN 27 2015

CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTERST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....3

STATEMENT OF CASE AND FACTS.....5

FIRST POSTION OF LAW AND ARGUMENT:

It is a violation of both the Fourteenth Amendment Due Process Clause of the United States Constitution and of Article I Section I of the Ohio Constitution to terminate the parental rights of a non-offending parent based on the notion of “failure to protect.”.....6

SECOND POSITION OF LAW AND ARGUMENT:

The unfitness factors in section 2151.414 (E)(1) of the Ohio Revised Code is unconstitutionally vague and discriminates against poor parents in termination proceedings.....8

THIRD POSITION OF LAW AND ARGUEMNT:

A natural parent and their child[ern] have a constitutional and fundamental right to keep their relationship intact and free from government interference.....10

CONCLUSION.....12

CERTIFICATE OF SERVICE.....13

APPENDIX

In re: T.B., et al, Decision and Judgment, Lucas County Court of Appeals, Case No. L-14-1122, December 19, 2014A-1

**EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT INTEREST
AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case involves the involuntary termination of parental rights and as such it poses not only substantial constitutional questions but also is one of public or great interest. Every year thousands of parents in Ohio have their parental rights terminated and a great portion of them are poor. This case offers the Court the opportunity to clarify certain statutes governing termination of parental rights and to establish the same precedent that several other states have in regards to poor parents in termination of parental rights cases. Here in Ohio, just as in the rest of the country, parents possess diverse religious, ethnic, financial and racial backgrounds and thus raise their children in different manners. However, judges and caseworkers sometimes fail to understand these distinctions in their determinations in termination proceedings.

The United States Supreme Court has long held that parental rights are fundamental and therefore protected under the Due Process Clause of the Fourteenth Amendment. “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. Until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.” *Santosky v. Kramer*, 455 U.S. 745 (1982).

Moreover, the U.S Supreme Court has held that the Fourteenth Amendment “forbids the government to infringe ‘fundamental’ liberty interests of all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Washington v.*

Glucksburg, 521 U.S. 702 (1997). . Furthermore, this Honorable Court has established that the right to raise one's children is an "essential" and "basic right." In re Murray (1990), 52 Ohio St.3d 155.

In this case the Sixth District Court of Appeals failed to properly scrutinize the elements of the case and the record contained therein thus affirming the trial court's decision to terminate the rights of the mother. The mother argued in her appeal that not only did the State failed to meet their burden of proof by clear and convincing evidence but also to provide her with the proper services to reunite her with her children, seeking instead to prematurely terminate her parental rights. Furthermore, the mother in her appeal argued that the trial court had made plain and reversible errors related to both the unfit and best interest statutes. Because parental rights have long been deemed fundamental by United States Supreme Court those decisions that seek to devastate those rights should be subject to "strict scrutiny" or at the very least a "heightened degree of scrutiny."

Moreover, this Honorable held that a parental bond is a bond that goes to the very fabric of our existence and one that can never truly be replaced. This bond is as vital to the child as it is the parent and "must be afforded every procedural and substantive protection that the law allows." *In re Hayes* (1997), 79 Ohio St.3d 46, 48, 679 N.E2d 680, quoting *Smith*. While there are many statutory factors that are supposed to be taken into consideration in termination cases, some weigh more than others, whether it be by design or by practice. The circumstances surrounding this case are unique to the Court but not to the community from which this case is derived. Many of the circumstances that apply in this case also apply in several others, especially those who are the most vulnerable to government interference, the poor. It is for the reasons set forth that this Court should grant jurisdiction.

STATEMENT OF THE CASE AND FACTS

This is a permanent custody case which originated in the Lucas County Juvenile Court. Lucas County Children Services (LCCS) filed a complaint in dependency and neglect concerning the six Bragg children on March 29, 2013. The children are known as T.B., dob 6/23/2004; T.B. dob 12/20/2005; T.B. dob 9/12/2007; T.B. dob 8/9/2009; T.B. dob 9/14/2010; and T.B. dob 4/19/2012. A shelter care hearing also occurred on March 9, 2013. The agency was awarded interim, temporary custody. The children were adjudicated dependent, neglected and abused on May 9, 2013, and temporary custody was awarded to the agency on June 18, 2013.

Concerns at the time of the filing of the complaint were mental health of the mother, housing for both parents, medical neglect of the children, and sexual abuse of some of the children by their father. A motion for permanent custody was subsequently filed on August 14, 2013, and the matter came before the court for trial on November 25, 2013; February 28, 2014; May 5, 2104 and May 9, 2014. The judgment entry of the court was filed on May 23, 2014. June 5, 2014 mother L.C. filed the instant, timely appeal. Mother filed appellate briefs as a pro se litigant. Mother argued for a reversal on three assessments of error, the Sixth District Court of Appeals subsequently affirmed the trial court's decision on December 19, 2014.

ARGUMENT

FIRST PROPOSTION OF LAW

It is a violation of both the Fourteenth Amendment Due Process Clause of the United States Constitution and of Article I Section I of the Ohio Constitution to terminate the parental rights of a non-offending parent based on the notion of “failure to protect.”

The Fourteenth Amendment Section I of to the United States Constitution states the following:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section I of Article I of the Ohio Constitution states the following:

All men are by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Both, individually and together, these safeguards were established to protect the people from government abuse. While it is undeniable that parents are people and therefore make mistakes, it is also undeniable that government is comprised of people and therefore makes them as well. In this case, the trial court based much of its decision to terminate mother’s rights on her behavior during the time *before* the children were removed from the home. Furthermore, the court failed to recognize the changes in circumstances regarding the mother during the time of the trial such as her completion of non-offending parenting classes and cessation of her relationship with the father of the children.

Moreover, court failed to place any weight in the fact that the mother had not broken the law nor was she charged with any crime in accordance with the case. To treat two people as if they are one individual is inherently unconstitutional. Furthermore, for a juvenile court to terminate parental rights based solely on or in part on the parent's "failure to protect" especially when that parent had not been charged with any crime deprives that parent of their right to Due Process. In this case the mother was the non-offending parent and yet her rights were terminated as if she were the offending parent.

Keeping in mind that "failure to protect" is a broad phrase which can be applied in almost any case involving the welfare of children; it is hardly a concrete reason to terminate parental rights. Furthermore, the record does not show any significant event which occurred between the time that LCCS enacted the reunification plan for mother and the time that LCCS sought termination of mother's parental rights, other than the agency desired otherwise.

"Choices about marriage, family life, and the upbringing of children are among associated rights this Court has ranked as "of basic importance in our society," rights sheltered by the 14th Amendment against the State's unwarranted usurpation, disregard, or disrespect. This case involving that State's authority to sever permanently a parent-child bond, demanded the close consideration the Court has long required when a family association so undeniably important was at stake." *M.L.B v S.L.J*, 519 U.S. 102, 117 S. Ct. 555 (1996).

It is an unfortunate and repugnant fact that sexual abuse occurs, however, it occurs in *all* areas of our society. It is unconstitutional to target a non-offending parent for termination based on that fact. For if one parent can suffer the loss their parental rights, and absent criminal actions, thousands more will be subject to termination proceedings based on the arbitrary notion of failure to protect. Indeed, when this notion is applied to termination proceedings those

proceedings take on a “witch hunt” mentality by punishing the non-offending parent and most of all, the children won’t be the better for it.

ARGUMENT

SECOND PROPOSTION OF LAW

The unfitness factors in section 2151.414 (E)(1) of the Ohio Revised Code is unconstitutionally vague and discriminates against poor parents in termination proceedings.

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child’s 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:

(1) Following the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

Like the majority of parents who have lost their parental rights, this case involves a parent with limited financial means. Other states have attempted to rectify the issue of poverty in termination of parental rights proceedings. In *In re C.J.V.*, 746 S.E.2d 783 (Ga. Ct. App.2013), the Court of Appeals of Georgia reversed the termination of a mother’s parental rights to her children. The trail court based its decision to terminate on the mother’s failure to satisfy two

requirements of her case plan – stable housing and employment. The court of appeals, held that the mother’s rights were terminated because of her “economic inability to provide for the children, and that her shortcomings in failing to comply with the two major components of her case plan stem[med] largely for her relative poverty.” The court also stated that “poverty alone is not a basis for termination.”

In *In re G.S.R.*, 159 Cal. App. 4th 1202, 1205 (2008) the Court of Appeals reversed the termination of a father’s parental rights. The court of appeal held that the trial court violated the father’s right to due process by terminating his rights absent a finding of unfitness against him. The court also commented on what it termed the “absurdity” of a child welfare agency’s failure to assist the father in obtaining suitable housing. The court went on to note that it makes no sense for states to pay a significant amount of money to subsidize foster-care placements but not to assist parents in overcoming the financial barriers to regaining custody of their children.

While it is undisputed that the mother in this case lacked her own home, she was living with her sister at the time of the trial and testified as to how the living arrangements would be should her children be returned to her. It is also undisputed that LCCS provided absolutely no housing assistance to the mother during the duration of the case. However, the trial court deemed her living situation to be “unsuitable.” “The best interest standard does not permit termination merely because a child might be better off living elsewhere. Termination should not be used to merely reallocate children to better and more prosperous parents.” *In the Interest of C.E.K.*, 2006 Tex. App. LEXIS 9838.

In this case as with a great many others, because of the mother’s limited financial means she was unable to complete the housing requirement of her case plan and thus it was used as an

unfitness factor. The Supreme Court of the United States has noted “Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias” The Court further noted “The State’s ability to assemble its case almost inevitably dwarfs the parent’s ability to mount a defense. No predetermined limits respect the sums an agency may spend in prosecuting a given termination proceeding. The State’s attorney usually will be expert on the issues contested and the procedures employed at the fact finding hearing, and enjoys full access to all public records concerning the family.

The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency’s own professional caseworkers, whom the State has empowered both to investigate the family situation and to testify against the parents. Indeed because the child is already in agency custody, the State even has the power to shape the historical events that form the basis for termination” *Sankosky v. Kramer* 455 U.S 745, 763 (1982). It is clear that the Court was not ignorant of the uphill battle that a parent must wage in order to prove that they are fit to raise their own children; this is magnified when the parent is socioeconomically disadvantaged.

ARGUMENT

THIRD PROPOSTION OF LAW

A natural parent and their child[ern] have a constitutional and fundamental right to keep their relationship intact and free from government interference.

“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function ad freedom include preparation for obligations the state can

neither supply nor hinder. It is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.” *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944). “The liberty interest in family privacy has its source, and its contours are ordinary to be sought, not in state law, but in the intrinsic human rights, as they have been understood in “this Nation’s history and tradition.” *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977).

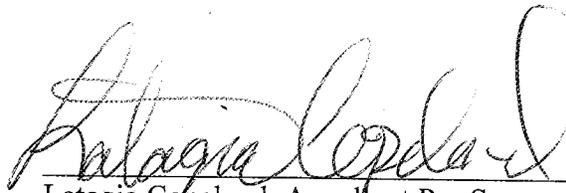
In order for the State to permanently sever the relationship between natural parent and child, the State must prove by “clear and convincing” evidence that first the parent is unfit and second that it is in the best interest of the child to do so. Clear and convincing is defined as “that measure or degree of proof which is more than a mere ‘preponderance of evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal case, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *21 O. Jur. 2d Evidence § 699 (1956)*. However, therein lies the issue that parents face when the State moves to terminate parental rights, because the definition of clear and convincing evidence leaves much discretion to the judge determining it.

While it is a rule of law that an appellate court will not substitute its judgment for that of the trial court, several Ohio courts of appeals have done so in many custody cases involving standards of evidence. Moreover, it is generally understood in the legal community that due to the open interpretation of clear in convincing evidence that it is whatever the judge in a particular custody case says it is. This heightens the risk of erroneous termination of parental rights as is alleged in this case. “The Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made.” *Troxel v. Granville*, 530 U.S. 57 (2000).

CONCLUSION

For the forgoing reasons contained therein, this case involves both, a substantial constitutional question as well as a question of public or great interest. This Court should grant jurisdiction.

Respectfully submitted,



Latagia Copeland, Appellant Pro Se

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was hand delivered to counsel for appellee,
at the following address on January 26, 2015:

Jill Wolff
Staff Attorney, LCCS
705 Adams St.
Toledo, OH 43604



Latagia Copeland, Appellant Pro Se

IN THE SUPREME COURT OF OHIO

In re: T.B., et al.

On Appeal from the
Lucas County
Court of Appeals
6th Appellate District

Court of Appeals Case No. L-14-1122

**APPENDIX TO
MEMORANDUM IN SUPPORT OF JURISTITION
OF APPELLANT
LATAGIA COPELAND**

FILED
COURT OF APPEALS
2014 DEC 19 A 8:08

COMMON PLEAS COURT
BERNIE DULTER
CLERK OF COURTS

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

In re T.B., et al.

Court of Appeals No. L-14-1122

Trial Court No. JC 13231629

DECISION AND JUDGMENT

Decided: **DEC 19 2014**

Laurel A. Kendall, for appellant.

Jill E. Wolff, for appellee.

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, L.C., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating her parental rights and awarding permanent custody of her children, Tama.B., Timma.B., Tati.B., Timmy.B., Tari.B., and

E-JOURNALIZED

DEC 19 2014

1.

E -
JOURNALIZED
CIVILSCANNER1
12/19/2014
8:08:22 AM

A-1

Tamr.B., to appellee, Lucas County Children Services (LCCS). For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} On March 29, 2013, LCCS filed a complaint in the juvenile court alleging dependency, neglect, and abuse, and moving the court for a shelter care hearing. The complaint stemmed from a referral LCCS received two days earlier stating that there was no food in the family home. After receiving the referral, LCCS began an investigation that revealed that the oldest three children were being sexually abused by their father, T.B.¹ The children reported the abuse to appellant, but she failed to take action, believing that the children had fabricated the story at the urging of appellant's sister, who did not get along with T.B. Notwithstanding the reports of sexual abuse, appellant continued to allow T.B. to spend time alone with the children. In addition to the discovery of sexual abuse, LCCS found that appellant's house was "trashed with garbage, dirty diapers, old food, and had a strong odor." Moreover, it was alleged that the children were without clothing and that their hygienic needs were not being met.

{¶ 3} On the same day the complaint was filed, a shelter care hearing was held, after which LCCS was awarded interim, temporary custody. A case plan was filed on April 19, 2013, with the goal of reunification. The case plan required appellant to obtain stable housing, complete a mental health assessment, participate in a non-offending parenting course, and attend an interactive parenting program. Further, LCCS required

¹ T.B. appeared on the first day of trial and waived his right to remain a party to the action. Thus, T.B. is not a party to this appeal.

appellant to undergo a psychological evaluation. Ultimately, the children were adjudicated dependent, neglected, and abused on May 9, 2013. Consequently, LCCS was awarded temporary custody of the children.

{¶ 4} Three months later, on August 5, 2013, an amended case plan was filed, changing the permanency goal from reunification to permanent custody. A motion for permanent custody was subsequently filed on August 14, 2013. LCCS amended the case plan as a result of appellant's failure to comply with the terms of her original case plan. Specifically, appellant failed to secure stable housing. Further, appellant failed to receive a psychological evaluation, largely due to her refusal to consent to the release of her personal information. Her refusal was based in part on a mistrust of LCCS stemming from an incident in which an agency worker, without appellant's knowledge, placed appellant's initials on a release form that appellant had already signed.

{¶ 5} A hearing on LCCS's motion for permanent custody was held on November 25, 2013, February 27, May 5, and May 9, 2014. At the hearing, LCCS called three witnesses in support of its motion; Sasha Dacres, Holly Mangus, and Dr. Randall Schlievert. Appellant also testified, and called one witness of her own, Wendy Nathan. Finally, the children's guardian ad litem, Robin Fuller, also testified.

{¶ 6} At the conclusion of the hearing, the juvenile court granted LCCS's motion for permanent custody, finding that the children could not and should not be placed with appellant within a reasonable period of time under R.C. 2151.353(A)(4) and R.C.

2151.414(E)(1), (4), and (15), and that permanent custody to LCCS was in the children's best interests under R.C. 2151.414(D). Subsequently, appellant filed her timely notice of appeal.

{¶ 7} Based upon the belief that no prejudicial error occurred below, appellant's appointed counsel has filed a motion to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

{¶ 8} *Anders* and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978), set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous, counsel should so advise the court and request permission to withdraw. *Anders* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.*

{¶ 9} Counsel must also furnish the client with a copy of the brief and request to withdraw and allow the client sufficient time to raise additional matters. *Id.* Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or it may proceed to a decision on the merits if state law so requires. *Id.*

B. Assignments of Error

{¶ 10} In her *Anders* brief, appellant's counsel assigns the following potential errors for our review:

Potential Assignment of Error 1: The trial court erred in finding that Lucas County Children Services proved by clear and convincing evidence that mother failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the children's home. R.C. 2151.414(E)(1).

Potential Assignment of Error 2: The trial court erred in finding that Lucas County Children [Services] proved by clear and convincing evidence that mother committed abuse or allowed the children to suffer neglect, and that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the children's placement with the mother a threat to the children's safety. R.C. 2151.414(E)(15).

Potential Assignment of Error 3: The trial court erred in finding that Lucas County Children [Services] proved by clear and convincing evidence that mother allowed the father to have access to the children after they disclosed sexual abuse to her by him, thus exacerbating the abuse they had suffered, and creating additional emotional damage. R.C. 2151.414(E)(16).

{¶ 11} Additionally, appellant has filed her own brief, raising the following assignments of error:

I. The trial court committed plain and reversible error by awarding custody to LCCS when it had failed to comply with R.C. 2151.419(B)(1).

II. The trial court erred in finding that LCCS proved by clear and convincing evidence that mother failed continuously and repeatedly to remedy the conditions causing the children to be placed outside the children's home [pursuant] to R.C. 2151.414(E)(1).

III. The trial court erred in finding by clear and convincing evidence that it was in the best interest of the children that LCCS be granted permanent custody when it failed to properly apply all five relevant factors [under] R.C. 2151.414(D).

{¶ 12} For ease of discussion, we will address the proposed assignments of error out of order.

II. Analysis

{¶ 13} In *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), the United States Supreme Court noted that parents' interest in the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized by this Court." The protection of the family unit has always been a vital concern of the courts. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

{¶ 14} Ohio courts have long held that "parents who are 'suitable' persons have a 'paramount' right to the custody of their minor children." *In re Perales*, 52 Ohio St.2d

89, 97, 369 N.E.2d 1047 (1977). Therefore, parents “must be afforded every procedural and substantive protection the law allows.” *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991).

{¶ 15} Thus, a finding of inadequate parental care, supported by clear and convincing evidence, is a necessary predicate to terminating parental rights. “Before any court may consider whether a child’s best interests may be served by permanent removal from his or her family, there must be first a demonstration that the parents are ‘unfit.’” *In re Stacey S.*, 136 Ohio App.3d 503, 516, 737 N.E.2d 92 (6th Dist.1999), citing *Quillon v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978). Parental unfitness is demonstrated by evidence sufficient to support findings pursuant to R.C. 2151.414. See *In re William S.*, 75 Ohio St.3d 95, 661 N.E.2d 738 (1996), syllabus.

{¶ 16} In order to terminate parental rights and award permanent custody of a child to a public services agency under R.C. 2151.353(A)(4), the juvenile court must find, by clear and convincing evidence, two things: (1) that the children cannot be placed with one of their parents within a reasonable time or should not be placed with their parents under R.C. 2151.414(E), and (2) that permanent custody is in the best interests of the child under R.C. 2151.414(D)(1). Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. It is more than a preponderance of the evidence, but does not require proof beyond a reasonable doubt. *Id.*

{¶ 17} “A trial court’s determination in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence.” *In re A.H.*, 6th Dist. No. L-11-1057, 2011-Ohio-4857, ¶ 11, citing *In re Andy-Jones*, 10th Dist. Nos. 03AP-1167, 03AP-1231, 2004-Ohio-3312, ¶ 28. In conducting a review on manifest weight, the reviewing court “weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines 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 [judgment] must be reversed and a new trial ordered.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17. We recognize that, as the trier of fact, the trial court is in the best position to weigh the evidence and evaluate the testimony. *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Thus, “[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts.” *Eastley* at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, fn. 3, 461 N.E.2d 1273 (1984).

A. Reasonable Efforts Determination

{¶ 18} In appellant’s first assignment of error, she argues that the juvenile court failed to comply with R.C. 2151.419(B)(1) prior to granting LCCS’s motion for permanent custody.

{¶ 19} R.C. 2151.419(B)(1) provides:

(B)(1) A court that is required to make a determination as described in division (A)(1) or (2) of this section shall issue written findings of fact setting forth the reasons supporting its determination. If the court makes a written determination under division (A)(1) of this section, it shall briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from the child's home or enable the child to return safely home.

{¶ 20} Here, appellant contends that the court failed to include findings of fact in its decision outlining the services provided by LCCS and why the services were unsuccessful in preventing removal of the children from the home. We disagree.

{¶ 21} In its decision, the juvenile court pointed out that case plan services were offered to appellant beginning in March 2013. The court went on to indicate that those services included "mental health assessments and treatment, psychological assessment, non-offenders parenting services, case management services, and visitation." Later in its decision, the court explained that appellant "has not been cooperative with services." In support of its conclusion, the court cited appellant's refusal to address the issues that led to the removal of her children. The court noted appellant's failure to complete a psychological evaluation as directed, along with her refusal to sign a release form so that LCCS could communicate with her mental health providers.

{¶ 22} Having reviewed the juvenile court's decision and the record in its entirety, we find no merit to appellant's assertion that the court failed to comply with the requirements of R.C. 2151.419(B)(1). Consequently, appellant's first assignment of error is not well-taken.

B. Juvenile Court's Application of R.C. 2151.414(E)

{¶ 23} In appellate counsel's first potential assignment of error, she argues that the trial court erred in finding, under R.C. 2151.414(E)(1), that appellant failed to remedy the conditions causing the children to be placed outside the children's home. Likewise, appellant raises the same argument in her second assignment of error. Further, in appellate counsel's second and third potential assignments of error, she contends that the trial court erred in finding mother committed abuse or allowed the children to suffer neglect, and that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the children's placement with the mother a threat to the children's safety under R.C. 2151.414(E)(15). Because each of these assignments of error challenge the juvenile court's findings under R.C. 2151.414(E) and its concomitant determination that the children cannot be placed with appellant within a reasonable time or should not be placed with appellant, we will address the assignments of error simultaneously.

{¶ 24} Here, the juvenile court found that the children could not and should not be placed with appellant within a reasonable period of time under R.C. 2151.414(E). Specifically, the court found that R.C. 2151.414(E)(1), (4), and (15) applied with respect to appellant.

{¶ 25} R.C. 2151.414(E) provides, in relevant part:

In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, * * * that one or more of the following exist as to each of the child's 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:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

* * *

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

* * *

(15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶ 26} Appellant, and her appointed counsel, assert that the juvenile court erred in finding that she failed to remedy the conditions causing the children to be placed outside the children's home under R.C. 2151.414(E)(1). Moreover, counsel contends that the juvenile court erroneously found that appellant committed abuse or allowed the children to suffer neglect under R.C. 2151.414(E)(15).

{¶ 27} At the outset, we note that R.C. 2151.414(E) directs a juvenile court to enter a finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent when *any* of the enumerated factors are found to be applicable. Thus, even if the juvenile court erred in concluding that R.C.

2151.414(E)(1) and (15) was applicable, its findings under R.C. 2151.414(E)(4) are sufficient to support its conclusion that the children could not be placed with appellant within a reasonable time or should not be placed with appellant. Nonetheless, we find that the juvenile court's findings under R.C. 2151.414(E)(1) and (15) were not against the manifest weight of the evidence.

{¶ 28} Concerning the juvenile court's finding under R.C. 2151.414(E)(1), the record contains ample evidence to demonstrate that appellant failed to remedy the conditions causing the children to be placed outside the children's home. As stated by the juvenile court, the children were removed "due to concerns for poor supervision, parenting concerns, mental health concerns for [appellant], and sexual and physical abuse of the children."

{¶ 29} At the hearing on the motion for permanent custody, LCCS caseworker, Sasha Dacres, testified that LCCS developed a case plan for appellant, which included a parenting program, a mental health assessment, domestic violence services, and a psychological evaluation. Further, appellant was expected to secure suitable housing. Dacres noted that appellant completed the parenting program and engaged in mental health services through Harbor Behavior Health. However, appellant was unable to secure independent housing suitable for herself and her six children. Currently, appellant resides in a single-family home with her sister and her sister's two children. Moreover, according to Dacres, appellant exhibited "a lot of resistance" concerning the psychological evaluation. Specifically, appellant visited Harbor, but the agency was

unable to obtain any information from Harbor because appellant revoked her consent for the release of such information. Subsequently, appellant refused to sign a release for several months after visiting Harbor. Ultimately, appellant failed to schedule an appointment with Harbor to have her psychological evaluation completed. Once LCCS was able to communicate with Harbor, it was discovered that appellant's treatment plan did not adequately address the issues concerning the children, namely the sexual abuse that had occurred. Upon further questioning, Dacres stated that appellant had not completed the psychological evaluation as of the date of the hearing. She also indicated that appellant was persistent in her refusal to acknowledge the sexual abuse that had occurred in the home.

{¶ 30} With regard to the issue of appellant's poor supervision of the children, Dacres testified that she observed appellant's supervised visits with the children during the pendency of this case. Based on her observations, Dacres stated that appellant had little to no interaction with the children. Dacres also noted appellant's requests to reschedule or shorten several of the visits to accommodate her school schedule.

{¶ 31} Dacres's testimony was echoed by the LCCS supervisor assigned to this case, Holly Mangus, who stated that appellant refused to accept that the children had been abused, instead blaming her sister for "[putting] thoughts into the mind of the children." Despite the physical evidence supporting the sexual abuse allegations, appellant continued to deny that the children were sexually abused. Mangus also testified that appellant's cooperation with LCCS throughout this process has been "very poor."

Mangus based her assessment of appellant's cooperation on appellant's revocation of consent for the agency to communicate with health professionals and her persistent refusal to subsequently sign such releases despite her attorney's permission to do so. Concerning appellant's supervision of the children, Mangus testified that appellant was "parenting from the couch," meaning she failed to engage the children or interact with them.

{¶ 32} Finally, the children's guardian ad litem, Robin Fuller, also testified at the hearing. When asked to describe her observations of appellant's supervised visits with the children, Fuller stated:

It's very chaotic. The kids all want her attention. Usually she has the baby on her lap. She's kind of oblivious to the other kids. * * * During the visits she really isn't focused on the kids. She looks frustrated, overwhelmed. She doesn't watch what they're doing. At one point myself and another parent that was in the room had to redirect [one of the children] because she was trying to plug stuff into a socket that had been covered. And she was trying to take the cover off, and I told [appellant] twice that was happening, but she doesn't respond. She just kind of sits there. * * * But she really doesn't engage with the kids. She's just kind of there physically but not mentally.

{¶ 33} In light of the foregoing testimony presented at the hearing, we cannot say that the juvenile court's conclusion that appellant failed to remedy the problems that

initially caused the children to be removed from the home was against the manifest weight of the evidence. Consequently, appellate counsel's first potential assignment of error and appellant's second assignment of error are not well-taken.

{¶ 34} In addition to the juvenile court's findings under R.C. 2151.414(E)(1), the court also found that appellant committed abuse or allowed the children to suffer neglect under R.C. 2151.414(E)(15). We find the evidence presented above to be supportive of the juvenile court's findings under R.C. 2151.414(E)(15). In particular, we conclude that appellant's neglect is demonstrated via her refusal to take the children's reports of sexual abuse seriously, and subsequent failure to remove the children from the environment in which they were being abused. In addition, evidence was presented at the hearing relating to physical abuse suffered by the children. Specifically, an incident occurred in October 2009 in which one of the children, who was unsupervised at the time, was burned with a hair dryer that was being used to keep the child warm. Appellant was subsequently convicted of child endangering as a result of this incident. Appellant also acknowledged at the hearing that appellant utilized discipline tactics involving forcing the children to stand in a corner until their feet hurt, and threatened to have the children "whooped" with a belt by their father if they moved from the corner before she told them to do so. Based on this evidence, we cannot say that the juvenile court's findings under R.C. 2151.414(E)(15) were against the manifest weight of the evidence. Accordingly, appellate counsel's second and third potential assignments of error are not well-taken.

C. Best Interests of the Children Under R.C. 2151.414(D)(1)

{¶ 35} In her third assignment of error, appellant argues that the trial court erred in finding that a grant of permanent custody to LCCS was in the children's best interests under R.C. 2151.414(D)(1).

{¶ 36} R.C.2151.414(D)(1) provides:

(D)(1) In determining the best interest of a child * * *, the court shall consider all relevant factors, including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or 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 and, as described in division (D)(1) of section

2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

For the purposes of division (D)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

{¶ 37} Here, with regard to its consideration of the children's best interests, the juvenile court stated: "The court has considered all of the best interest factors contained in R.C. 2151.414(D)(1) and the Court further finds that it is in the best interest of [the children] that permanent custody be awarded to LCCS." Nonetheless, appellant argues that the court "offered no clear analysis of each of the factors and for each of the children."

{¶ 38} Regarding the mandate set forth in R.C. 2151.414(D)(1), we note that the trial court is required to *consider* the factors set forth therein. Thus, the statute does not require the juvenile court to provide a "clear analysis" of each of the factors so long as

the record clearly demonstrates that they were considered in arriving at the best interest determination. Moreover, we find that the juvenile court in this case did, in fact, detail its reasoning for finding that permanent custody was in the children's best interests.

{¶ 39} Under R.C. 2151.414(D)(1)(a), the court found that the children were "very bonded" to one another, and further found that the children were doing well in their foster placements. This finding was supported by testimony elicited from Dacres and Mangus. As to R.C. 2151.414(D)(1)(c), the court noted that the children had been removed from the home for 14 months as of the date of the hearing. As for the children's wishes under R.C. 2151.414(D)(1)(b), Dacres testified that only one of the children consistently expressed a desire to be reunified with appellant. Pursuant to R.C. 2151.414(D)(1)(d), the court specifically found that the children were "in need of a legally secure permanent placement and that an award of permanent custody will facilitate an adoptive placement." As to the wishes of the children, as expressed through the guardian ad litem, the court underscored Fuller's recommendation of permanent custody to LCCS based on appellant's failure to protect the children. Further, Dacres testified at the hearing that only one of the children consistently expressed a desire to be reunited with appellant.

{¶ 40} Having thoroughly reviewed the record before us, we cannot agree with appellant that the juvenile court failed to consider the factors involved in determining the children's best interests under R.C. 2151.414(D)(1). Rather, we conclude that the juvenile court's determination that permanent custody was in the children's best interests

was supported by clear and convincing evidence, and was not against the manifest weight of the evidence.

{¶ 41} Accordingly, appellant's third assignment of error is not well-taken.

III. Conclusion

{¶ 42} This court, as required under *Anders*, has undertaken our own examination of the record to determine whether any issue of arguable merit is presented for appeal.

We have found none. Accordingly, we grant counsel's motion to withdraw.

{¶ 43} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs are hereby assessed to appellant in accordance with App.R.

24. The clerk is ordered to serve all parties with notice of this decision.

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.

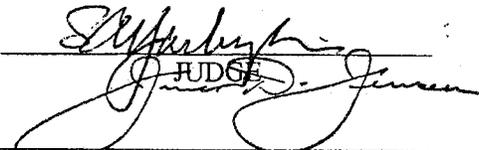
Thomas J. Osowik, J.

Stephen A. Yarbrough, P.J.

James D. Jensen, J.
CONCUR.



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>.