[Cite as *In re K.G.*, 2009-Ohio-6531.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:	)	CASE NO. 09 MA 56
	)	
K.G.	)	
	)	OPINION
	)	
	)	
	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio Case No. 07 JC 1406
JUDGMENT:	Affirmed.
APPEARANCES:	
For Appellee, Mahoning County Children's Services Board:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Lori L. Shells-Conne Assistant Prosecuting Attorney 21 West Boardman Street, 6th Floor Youngstown, Ohio 44503
For Appellant, Heather G.:	Atty. Scott C. Essad 6 Federal Plaza Central, Suite 1300 Youngstown, Ohio 44503

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: December 8, 2009

[Cite as *In re K.G.*, 2009-Ohio-6531.]
WAITE, J.

{¶1} Appellant Heather G. appeals the ruling of the Mahoning County Court of Common Pleas, Juvenile Division, granting permanent custody of her minor child, K.G., to the Mahoning County Children Services Board (MCCSB). Appellant contends that the weight of the evidence did not support the decision and that the court incorrectly relied on the doctrine of judicial notice regarding Appellant's adjudication as an incompetent by the probate court. The evidence supports the trial court's judgment. Appellant failed to complete various aspects of her case plan. She could not demonstrate that she could take care of herself or her child, and she failed to find appropriate housing for the child. Regarding the matter of judicial notice of incompetency, the record is replete with references to the prior adjudication, and it was proper for the court to take judicial notice. There is no error in the trial court proceedings, and the judgment is affirmed.

HISTORY OF THE CASE

{¶2} The minor child K.G. was born on August 10, 2007. Appellant is the mother. The father has relinquished his rights over the child and is not a party to this appeal. Less than a week after the child was born, Appellant signed a Voluntary Agreement of Care with MCCSB, and MCCSB took custody of the child. MCCSB established a case plan for Appellant to regain custody of the child. The case plan required Appellant to secure safe, stable housing; to remain drug and alcohol free; to submit to random drug screenings; to take medication for epilepsy; to take medication to treat her mental illnesses; to work with Meridian Services Agency in the

SAMI program to deal with her mental health and drug abuse issues; and to be able to demonstrate that she could meet the needs of the minor child.

{¶3} A dependency hearing was held on January 31, 2008. All parties at that time stipulated that K.G. was a dependent child, and the court issued the adjudication of dependency that same day. No objections were filed, and there was no appeal of the final order of dependency.

{¶4} While the case was pending it became evident that Appellant was not fulfilling the terms of her case plan. Appellant failed to take medications for her mental disorders, failed to find proper housing, and failed to demonstrate that she could meet the needs of the child. Appellant also failed to appear for scheduled visitation with the child. On one occasion when she failed to appear, Appellant's mother asked MCCSB to check up on her, and it appeared that Appellant had suffered a seizure in her apartment and was injured. (Tr., p. 29.) Appellant continued to have repeated epileptic seizures, some of which occurred during visits with the child at the MCCSB offices. She failed to demonstrate any plan for dealing with the needs and safety of the child during these seizures. Her visits with K.G. were very difficult, usually resulting in K.G. crying and being upset during the entire visit.

{¶5} When it became clear that Appellant could not complete her case plan, MCCSB filed a motion to modify temporary custody to permanent custody with the power of adoption on May 28, 2008. In the motion it was alleged that Appellant had been adjudicated incompetent, had failed to find proper housing for the child, had

failed to take prescription medications, and that MCCSB had previously been granted permanent custody of Appellant's other child. The case was heard before a magistrate on September 17, 2008, and October 2, 2008.

{¶6} Appellant's caseworker, Karey Karr, testified that Appellant had previously tested positive for cocaine and other substances. (Tr., p. 18). She testified that Appellant was an epileptic, and that a number of seizures had taken place in her presence during visitation with the child. (Tr., p. 21.) During one seizure, Ms. Karr called an ambulance because Appellant had hit her head on a car. Ms. Karr testified that Appellant missed some of her appointments with her mental health counselor. (Tr., p. 23.) She also testified that Appellant completed her parenting classes and had not tested positive for drug abuse since 2006.

{¶7} Ms. Karr testified that Appellant lived in a housing complex that did not allow children to be residents. (Tr., p. 25.) This was later confirmed by the testimony of Joan Giba, project manager of the housing complex. (Tr., p. 72.) The housing complex was restricted for persons 62 years old or older and for the disabled over the age of 18. Children were only permitted to have twenty overnight stays per year due to HUD regulations. (Tr., p. 74.) Appellant's current boyfriend, Abdul Fareed, testified that he and Appellant had not been able to find appropriate housing that could accommodate the child. (Tr., p. 127.)

{¶8} Ms. Karr testified that even if the housing complex did allow children, Appellant had no provisions to take care of a child. She lived in a one-bedroom

apartment with no crib, no baby supplies, and no method to protect a baby from the dangers of an adult apartment.

{¶9} Ms. Karr testified that MCCSB took permanent custody of Appellant's other child on April 13, 2008.

{¶10} Ms. Karr testified that Appellant was supposed to be taking psychotropic medication, but that she decided on her own to stop taking it because she thought it caused her to have more seizures. (Tr., p. 28.)

{¶11} Ms. Karr testified that Appellant had been adjudicated an incompetent by the Mahoning County Court of Common Pleas, Probate Division, in 2004, and that guardians had been appointed to represent Appellant. The record indicates that Appellant's parents, Barbara and William Gibson, are her guardians. It should be noted that Ms. Karr's testimony regarding Appellant's incompetency was entered without objection from her attorney, and that Appellant's guardian ad litem for these proceedings was present at the hearing, examined witnesses, and did not object to the references to incompetency. Appellant's adjudication of incompetency was also established in the guardian ad litem's report of September 17, 2008. Appellant's incompetency is an issue on appeal.

{¶12} Ms. Karr testified that Appellant would need someone to be with her 24 hours per day to care for both Appellant's needs and the needs of K.G. Ms. Karr was not able to indentify any person who could assist Appellant in caring for herself and for K.G. Appellant was not married, but she did have a boyfriend. He was

undergoing lengthy dialysis treatment three days per week which would prevent him from providing 24-hour care for Appellant and the child.

{¶13} Dr. Thorne, who examined Appellant for purposes of this custody case, found that Appellant suffered from a wide variety of mental illnesses, including bipolar disorder, schizophrenia, and delusions. Appellant also suffered from learning disabilities, and had inappropriate emotional expectations from her child. Dr. Thorne was particularly concerned about Appellant's seizure disorder, and noted that it was triggered by stress along with other more basic environmental causes. Dr. Thorne indicated that a sip of a can of diet soda had once triggered a seizure. The doctor was particularly concerned about the child's safety if Appellant had a seizure in the bathroom and no one else was in the apartment to protect Appellant and the child from the effects of the seizure.

{¶14} Cara Stevens, one of Appellant's counselors, testified that Appellant decided, on her own, to stop taking the medications prescribed by her psychiatrist because she did not feel it was helping her. (Tr., p. 79.) Ms. Stevens also noted that Appellant had made significant progress in her ability to control her emotions, but that she was not ready to terminate the counseling program. Ms. Stevens mentioned that Appellant had talked about finding other housing that would be suitable for a child, but that the search was in the very early exploratory phase.

{¶15} Abdul Fareed, Appellant's boyfriend, testified that he helps take care of Appellant, but that there is no one else taking care of Appellant when he is undergoing dialysis treatment. (Tr., p. 132.) He testified that he and Appellant had

discussed a plan for a nurse to be present when he was away at dialysis, but this was nothing more than an idea.

{¶16} Appellant herself testified at the hearing. She testified that she had no positive tests for illegal drugs in two years, had completed her parenting classes, had shown up at all visitations, and had befriended Abdul Fareed, who was helping her cope with the difficulties of her life. (Tr. II, pp. 7-9.) She stated that she was saving some money to get the right housing for her daughter, but that she did not have enough money for new housing. She noted that she had decided to stop taking her psychotropic medications because she believed it interfered with her seizure medicine. (Tr. II, p. 11.) She stated that she had a seizure three or four months prior to the hearing. She testified that she planned to have a nurse come in and help her when Abdul was not available.

{¶17} The magistrate issued her decision on October 28, 2008. The magistrate found that Appellant had her parental rights involuntarily terminated in a sibling of the subject child. The magistrate found that Appellant had not found appropriate housing, is bipolar with mild retardation, has epileptic seizures, and does not have a primary support system to care for her or for a child. The magistrate noted that Appellant had been adjudicated incompetent and that her parents were her guardians. The magistrate found that it was in the best interests of the child to award permanent custody to MCCSB.

{¶18} Appellant filed objections to the magistrate's decision on November 6, 2008. The only objection was that the decision was against the manifest weight of

the evidence. The objections were heard on February 2, 2009. The court filed its judgment entry on February 11, 2009. The court reiterated the magistrate's findings, and ordered that the child be permanently committed to MCCSB with power of adoption. This timely appeal followed.

ASSIGNMENT OF ERROR NO. 1

{¶19} "The juvenile court's decision finding K.G. dependent pursuant to R.C. §2151.04 was against the manifest weight of the evidence, nor was it supported by clear and convincing evidence."

{¶20} This is an appeal of a ruling that transferred permanent custody of a child from the mother to a children services agency. At the outset, it is well-established that a parent's right to raise a child is an essential and basic civil right: "The rights to conceive and to raise one's children have been deemed 'essential, * * * basic civil rights of man,' * * * and '[r]ights far more precious * * * than property rights.' " (Citations omitted.) *Stanley v. Illinois* (1972), 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551. The permanent termination of parental rights has been described as, "the family law equivalent of the death penalty in a criminal case." *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45. Based upon these principles, the Ohio Supreme Court has determined that a parent who is at risk of losing all parental rights over his or her child, "must be afforded every procedural and substantive protection the law allows." (Citation omitted.) *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶14, quoting *In re Hayes* (1997), 79 Ohio St.3d 46, 49, 679 N.E.2d 680.

{¶21} R.C. 2151.413 and 2151.415 permit a public children services agency that has temporary custody of a child to file a motion requesting permanent custody of the child. R.C. 2151.353(A)(4) also allows the court to commit a child to the permanent custody of a children's services agency "if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child." In considering a motion filed pursuant to R.C. 2151.413, the trial court must follow the guidelines set forth in R.C. 2151.414. R.C. 2151.414(A)(1) requires the trial court to hold a hearing regarding the motion for permanent custody. The primary purpose of the hearing is to allow the trial court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. See R.C. 2151.414(A)(1). The decision to award permanent custody to the children services agency must be proven by clear and convincing evidence. R.C. 2151.414(B)(1).

{¶22} To be awarded permanent custody, the children services agency must prove that it is in the best interests of the child and that one of the four factors listed in R.C. 2151.414(B)(1)(a)-(d) is met, those factors being:

{¶23} "(a) The child is not abandoned or orphaned, has not 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 has not 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 if, 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, and 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.

{¶24} "(b) The child is abandoned.

{¶25} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶26} "(d) 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."

{¶27} There does not appear to be any dispute that MCCSB had temporary custody of K.G. less than 12 months of the previous 22 months, and thus, was requesting permanent custody under R.C. 2151.414(B)(1)(a).

{¶28} On appeal, Appellant raises a number of questions about whether the court properly found that K.G. was a dependent child. The matter of dependency though, was resolved on January 31, 2008, when the child was adjudicated a dependent child. We also note that Appellant brought the child to MCCSB and signed a voluntary agreement of commitment. This was not a case where MCCSB initiated the complaint to remove the child from Appellant's custody. Appellant also stipulated to all the facts establishing dependency. (1/31/08 J.E.) The question of dependency was resolved long before the final custody hearing took place and cannot be challenged at this time. The proper time to appeal this issue would have been immediately after the January 31, 2008, judgment entry determining dependency was filed. The Supreme Court of Ohio has held that: "An adjudication by a juvenile court that a child is 'neglected' or 'dependent' as defined in R.C. Chapter 2151 followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) constitutes a 'final order' within the meaning of R.C. 2505.02 and is appealable to the court of appeals pursuant to R.C. 2501.02." *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, syllabus. Thus, the matter of dependency is not under review in this appeal. As stated in R.C 2151.414(A)(1): "The adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the [permanent custody] hearing[.]"

{¶29} Assuming that Appellant is also challenging the manifest weight of the court's best interests finding, it is axiomatic that judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578.

{¶30} When applying the best interests analysis, the court must follow R.C. 2151.414(D), which states:

{¶31} "(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

{¶32} "(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;

{¶33} "(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;

{¶34} "(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;

{¶35} "(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;

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

{¶37} Since the court must consider whether any of the factors from R.C. 2151.414.(E)(7)-(11) are present, those factors are listed here:

{¶38} "(7) The parent has been convicted of or pleaded guilty to one of the following:

{¶39} "(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

{¶40} "(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

{¶41} “(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

{¶42} “(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

{¶43} “(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

{¶44} “(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

{¶45} “(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the

parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

{¶46} "(10) The parent has abandoned the child.

{¶47} "(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child."

{¶48} Appellee correctly states that Appellant has previously had her parental rights involuntarily terminated. (Tr., p. 27.) Under R.C. 2151.414(E)(11), once it is proven that the parent has previously had parental rights terminated, the burden shifts to the parent to prove by clear and convincing evidence that he or she can provide a legally secure permanent placement and provide adequate care for the child's health, welfare and safety.

{¶49} The record does not show by clear and convincing evidence that Appellant can provide for the child's health, welfare and safety. Appellant has no place for the child to live. Appellant's current housing prohibits children, and there were no significant or realistic alternatives presented at the final hearing to solve the housing issue. Appellant cannot take care of her own needs, much less those of a

child. There was no evidence in the record indicating that anyone else could provide full-time care for K.G. It is particularly striking that MCCSB had to intervene once to help Appellant when she injured herself at home during a seizure. Appellant disregarded her medical treatment by deciding, on her own, that she no longer needed to take her antidepressants and psychotropic medications. Although Appellant completed large segments of her case plan, there were many lapses, including failure to attend some counseling classes, failure to attend some visitation periods, failure to faithfully take her medications, and most importantly, failure to find proper housing. Dr. Thorne noted that Appellant was bipolar, depressed, delusional, schizophrenic, suffers a seizure disorder, and is learning disabled. He also noted that Appellant's seizures were provoked by stress, but also by something as simple as taking a sip of diet soda. (Tr., p. 44.)

{¶50} There is no evidence of any bonding between Appellant and the child. In fact, the contrary was quite evident, because the child was typically distressed and crying during the entire period of visitation with Appellant.

{¶51} Although Appellant accuses the trial court of relying on such factors as Appellant's disability status and income to make its determination, this is not established from the record. The fact that Appellant has epilepsy, and that her boyfriend has a kidney disorder and is undergoing dialysis, are relevant with respect to Appellant's ability to either care for the child or provide an adequate support system to care for the child. The court could not simply ignore the fact that Appellant was prone to seizures both in the home and outside the home. Due to the

application of R.C. 2151.414(E)(11) in this case, the burden shifted to Appellant to prove that she could provide for the health and safety of the child. Appellant did not attempt to prove that she could care for the child in case of her seizure. Although her boyfriend wanted to help, he himself established that he was not available for long periods of time due to his own medical treatment. It is not the medical conditions themselves that primarily concerned the court, but the lack of any plans to deal with the needs of the child during those periods when Appellant must attend to her own medical issues. It was also relevant for the court to discuss Appellant's decision to disregard her own treatment and stop taking the drugs necessary to treat her many mental disorders. This decision reflects on Appellant's judgment, and it was this poor judgment that concerned the court.

{¶52} We do recognize the difficult situation Appellant is presented with regarding her housing. The case plan required Appellant to find suitable housing for her child. Since Appellant is on disability and receives only approximately $650 per month, her housing options are limited. (Tr., p. 99.) Her caseworker testified that an unsubsidized apartment with two bedrooms would likely use up most of her income. In addition, she would be eligible for a two-bedroom subsidized apartment only if she had legal custody of her child. (Tr., p. 100.) Yet, she could not obtain custody of her child unless she found proper housing. As a single person, she qualifies for only a one bedroom apartment. Another option may have been to find a suitable one-bedroom apartment with no restrictions as to children. Her caseworker, Melissa Cook, testified, however, that they really had not done much exploration trying to find

one-bedroom subsidized apartments that would also take children. Appellant rejected any attempts to be placed in project apartments or housing sponsored by the Youngstown Metropolitan Housing Authority. (Tr., p. 101.) While housing presented a very challenging situation for Appellant, nothing in the record indicates that the court required Appellant to have a two-bedroom apartment, that the court considered Appellant's income too low to support a child, or that the court made use of any other inappropriate consideration as to Appellant's financial condition.

{¶53} The record fully supports the findings and conclusions of the court, and the manifest weight of the evidence shows that it was in the best interests of the child for permanent custody to be awarded to MCCSB. Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

{¶54} "The trial court erred when it took judicial notice of a case other than the one before it."

{¶55} Appellant argues that a trial court cannot take judicial notice of proceedings in a different case, even a different case from that same court. This is generally true. See, e.g., *Dombelek v. Ohio Bur. of Workers' Comp.*, 154 Ohio App.3d 338, 2003-Ohio-5151, 797 N.E.2d 144, ¶26. Appellant is concerned that the court took judicial notice of the fact that she was adjudicated an incompetent in 2004 and that her parents were appointed as her guardians. (Tr., p. 19.) Appellant contends that her alleged incompetence played a significant part in the trial court's judgment.

{¶56} It should first be noted that Appellant's counsel raised no objection to the testimony regarding judicial notice. By failing to object to the court taking judicial notice during the hearing, only plain error may be raised on appeal. *Kessler v. Kessler* (Dec. 19, 1986), 6th Dist. No. H-86-28. Error that does not affect the substantial rights of the parties is harmless and may not form a basis for reversal on appeal. See Civ.R. 61.

{¶57} Judicial notice deals with adjudicative facts, and in this case, there is no question that Appellant was adjudicated an incompetent in a prior proceeding. Evid.R. 201(B) states: "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonable be questioned." In this case, the record has numerous references to Appellant's guardians who were appointed after she was adjudicated incompetent, and they appeared at a variety of proceedings. Appellant's mother, one of her guardians, signed the initial voluntary agreement of care. A guardian ad litem was appointed for Appellant because of her incompetence. Appellant's parents, as her guardians, were given notice of proceedings and court orders. All these things happened long before the final custody hearing. The court had merely to look at its own proceedings to be fully cognizant that Appellant had been adjudicated an incompetent and was represented by guardians.

{¶58} The main reason why a court cannot take judicial notice of prior proceedings in a different case is that, "if a trial court takes notice of a prior proceeding, the appellate court cannot review whether the trial court correctly interpreted the prior case because the record of the prior case is not before the appellate court." *D & B Immobilization Corp. v. Dues* (1997), 122 Ohio App.3d 50, 53, 701 N.E.2d 32. That danger does not exist in this case, because the record of the instant case itself fully supports a finding that Appellant was incompetent and that her parents were appointed as her guardians.

{¶59} Appellant's second assignment of error is without merit and is overruled.

CONCLUSION

{¶60} Appellant has presented two issues on appeal. Appellant first argued that MCCSB did not establish that K.G. was a dependent child, but that issue should have been appealed within 30 days of the order within K.G. was actually adjudicated a dependent child in January 2008. Assuming that Appellant actually meant to challenge the ruling granting permanent custody to MCCSB, the weight of the evidence fully supports the court's judgment. Although Appellant fulfilled many parts of her case plan, there were significant lapses, including the inability to find housing, the failure to take her medications, and the failure to find an outside support system that could take care of both herself and her child. Appellant also questioned whether the court erred in taking judicial notice of her incompetency, but the record of this case repeatedly references her incompetency and the fact that her parents were

appointed as guardians. Both assignments of error are without merit, and the judgment is affirmed.

Donofrio, J., concurs.

Vukovich, P.J., concurs.