[Cite as *In re A.D.*, 2009-Ohio-4236.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
IN THE MATTER OF: A.D.	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
	:	
	:	
	:	Case No. 2009-CA-26
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Fairfield County Court of Common Pleas, Case No. 2007AB201
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 17, 2009
APPEARANCES:	
For: State of Ohio	For: Father – Charles Miller
JULIE BLAISDELL Fairfield County Prosecutor's Office 201 South Broad Street, 4th Floor Lancaster, OH 43130	MARK P. ORT 13297 Rustic Drive Pickerington, OH 43147-8976

Gwin, P.J.

{¶1} Charles Miller, the natural father of A.D., a minor child, appeals a judgment of the Court of Common Pleas of Fairfield County, Ohio, which terminated his parental rights and granted permanent custody of the child to the Fairfield County Child Protective Services. Appellant assigns four errors to the trial court:

{¶2} "I. THE TRIAL COURT ERRED WHEN IT GRANTED THE MOTION OF FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES FOR PERMANENT CUSTODY OF THE MINOR CHILD ALLIE DOWNING AS THE STATE OF Ohio FAILED TO ESTABLISH THE JURISDICTIONAL PREREQUISITES FOR A GRANT OF PERMANENT CUSTODY AS SET FORTH IN R.C. 2151.414.

{¶3} "II. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT GRANTED THE MOTION OF FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE OF THE FACTS REQUIRED BY R.C. 2151.14.

{¶4} "III. THE TRIAL COURT ERRED WHEN IT FOUND THAT REASONABLE EFFORTS NEED NOT BE EXPENDED TO REUNIFY THE APPELLANT WITH HER MINOR CHILD PURSUANT TO OHIO REVISED CODE 2151.419 IN ITS JUDGMENT ENTRY DATED APRIL 23, 2009.

{¶5} "IV. FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES PRESENTED INSUFFICIENT EVIDENCE FOR THE COURT TO GRANT LEGAL CUSTODY PURSUANT TO R.C. 2151.353 (A)(3) AND THE COURT'S DECISION WAS AGAINST THE MANIFEST WEIGHT TO THE EVIDENCE."

{¶6} The trial court made extensive findings of fact and conclusions of law regarding both appellant and the child's natural mother. The child's natural mother is not a party to this appeal.

{¶7} A.D. was born on May 5, 2005. On August 24, 2007, the natural mother signed a voluntary agreement for care A.D. to be placed in the custody of appellee, following a domestic violence incident.

{¶8} On September 18, 2007, appellee filed a dependency complaint, and on November 13, 2007, the court placed A.D. in appellee's temporary shelter custody.

{¶9} On December 11, 2007, appellee dismissed its complaint and re-filed in virtually the same form. On December 11, 2007, the court again placed A.D. in temporary children's custody of appellee.

{¶10} On February 12, 2008, the court found A.D. to be dependent and placed her in appellee's temporary custody. On April 2, 2009, the court entered its judgment granting appellee permanent custody of A.D.

{¶11} With respect to appellant, the court found appellant's signed a case plan on November 27, 2007, and appellee filed the plan on December 7, 2007. The court found when the child's mother surrendered the children on August 2007, she advised appellee that her mother, Annetta Smith and appellant were not appropriate placements for the children because of drug use. Accordingly, appellee's case plan for appellant involved an assessment for drug and/or alcohol issues and required him to submit to random screens for drugs and/or alcohol.

{¶12} Appellant completed an assessment for drug and/or alcohol issues in Pike County, Ohio, in December of 2007. The assessment recommended no further

services. The court found appellee did not have any input with the assessor prior to the evaluation. Subsequent to the drug and alcohol assessment, it was discovered appellant has active warrants for his arrest pending in Florida based on felony drug offenses. One of the active warrants came from Brevard County, Florida for one count of purchasing cocaine, a felony of the second degree, and one count of possession of cocaine, a felony of the third degree. The warrants are from March of 2004. appellant also has an active warrant for his arrest out of Glades County, Florida, for a probation violation in December, 2005.

{¶13} The court found appellant admitted he "went off the deep end" by using cocaine daily for approximately four to five years. Appellant participated in drug court in Florida, and left Florida without permission from the local authorities.

{¶14} The court found appellant tested positive for cocaine on May 13, 2008, September 9, 2008, September 16, 2008 and October 7, 2008. At the time of the final hearing, appellant took prescriptions for hydrocodone, oxycodone, Xanex, and other medications for diabetes and blood pressure. The court found although appellant claimed he took about four hydrocodones per day, as needed and one oxycodone per week for pain, appellant admitted he had taken at least three hydrocodones by 11:00 a.m. on the day of the final trial. The court found appellant was slow to answer questions, his memory was unclear, and his speech was sometimes slurred.

{¶15} In August 2008, appellant tested positive for methadone, for which he had a prescription a couple years prior. Appellant testified he did not remember whether he took the methadone on purpose or accidentally when he testified positive in August 2008.

{¶16} The court found at the time of the hearing, appellant was not involved in any treatment program and was not attending any 12 step meetings. The court found appellant had never been involved in a treatment program, nor had he attended any 12 step meetings throughout the agency's entire involvement with the family.

{¶17} The court found the assessment of December 7, 2007, was not credible, given subsequent information. The court found the concerns which originally prompted appellee to request an assessment for drugs and/or alcohol issues have been not been eliminated, but have in fact increased.

{¶18} The court found another aspect of appellant's case plan was to submit to random screens for drugs and/or alcohol. The court found up until approximately two weeks prior to trial in the permanent custody motion, none of the screens provided by appellant had been random and all screens had occurred prior to the scheduled visit with the child. The court found appellant offered numerous excuses why he could not comply with a random screening, and appellant had refused to submit to random screenings on seven occasions. On one of the occasions, appellant stated he could not submit to the screening because he was having car trouble, but the court found subsequently appellant received a speeding ticket.

{¶19} The court found appellee had made more than diligent efforts to assist appellant in screening that the efforts had not been successful.

{¶20} Another aspect of appellant's case plan involved obtaining an anger management assessment. The court in April 2006, appellant was charged with domestic violence, and A.D. had been present during the incident. The court found appellant charged on two other occasions with domestic violence, and completed anger

management classes, although he did not obtain a formal anger management assessment.

{¶21} The court concluded appellant had not successfully complied with his case plan.

{¶22} Throughout the agency's involvement, appellant lived with Annetta Smith, the maternal grandmother. Annetta Smith testified positive for cocaine on four occasions, none of which had been random. The court Annetta Smith offered the same excuses appellant did as to why she could not randomly screen. The court had ordered Annetta Smith to submit to random screenings, and get a drug and alcohol assessment so long as she lived with appellant. At the date of the permanent custody trial, appellant continued to reside with her.

{¶23} The court found appellant had never visited with A.D. without Annetta Smith also being present. Visits were set up through the Fairfield County Visitation Center, which closes a case after three missed visits. The court found appellant was twice closed out of the visitation center from missing visits.

{¶24} The court found appellant lacked knowledge concerning A.D.'s pre-school, her teacher, her pediatrician, and he had never attended any of her medical appointments. The court found despite reasonable case planning and diligent efforts by the agency to assist him, appellant had failed continuously and repeatedly to substantially remedy the conditions which caused A.D. to be placed outside her home. The court found appellant had not utilized psychological, social, and rehabilitative services, and material resources that were made available to him for purpose of changing his conduct to allow him to resume and maintain parental duties. The court

found appellant had demonstrated the lack of commitment toward A.D. by failing to regular support, visit, or communicate with her when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child. The court found appellant did not pay child support and did not have a consistent visitation schedule.

{¶25} The court expressed concern over the active criminal arrest warrants pending for drug offenses in Florida, as well as the recent domestic violence arrests. The court was concerned about the amount of prescription medical taken by appellant and Annetta Smith. The court found the demeanor of appellant during the trial raised safety concerns over any young child being placed in his care.

{¶26} The court found the interaction between appellant and the child is positive and that the child enjoys the visits. The court found numerous relatives were considered for placement, but they were either inappropriate or voluntarily declined to be considered as placement. The court found A.D. needs a legally secure permanent placement, and cannot achieve this without the granting of permanent custody to the agency. The court found A.D. has been in the temporary custody of appellee for 12 or more months of a continuous 22 month period. The court concluded by clear and convincing evidence it was in the best interest of A.D. to permanently terminate the parental rights of her natural mother and appellant, and to be placed in the permanent custody of appellee.

{¶27} Appellant argues he diligently worked on his case plan achieved all or nearly all of the goals direct by the court. Appellant argues he continued to visit regularly insofar as the weather, his health, and the availability of transportation

permitted. Appellant urges the positive tests for cocaine use were false positives, and each false positive test was confirmed as negative for cocaine when retested by a certified laboratory. He asserts on no less than five occasions he falsely tested negative for substances for which he had a prescription and was continuously ingesting. Appellant urges appellee failed to product any expert witness to explain why there were false positives and false negatives.

{¶28} Appellant alleges he successfully raised two other daughters, both of whom are adults.

I

{¶29} In his first assignment of error, appellant urges the court erred because appellee had not established the jurisdictional pre-requisites.

{¶30} R. C. 2151. 414 (B) addresses under what circumstances a trial court may grant permanent custody. The statue provides in pertinent part: ***

{¶31} Although appellant urges the court's findings of fact are incorrect, and he substantially complied with all the terms of his case plan, the child has been in the temporary custody of one or more public children's services agencies or private child placing agencies for 12 or more months of consecutive 22 month period ending on or before March 18, 1999.

{¶32} R.C. 2151.414 (E) provides a court shall consider all relevant evidence in determining whether a child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414 (E)(1) states: ***

{¶33} We find there is relevant, competent and credible evidence in the record from which the trial court could conclude by clear and convincing evidence the children

had been in the custody of appellee for 12 or more months of continuous 22 month period, and further, that despite reasonable case planning diligent efforts, appellant had failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed with appellee. There is sufficient, competent and credible evidence supporting the trial court's determination appellant had failed to utilize all the services and resources made available to him.

{¶34} The first assignment of error is overruled.

II

{¶35} In his second assignment of error, appellant urges the record does not contain sufficient, clear and convincing evidence of the facts. Given our holding in I, supra, we overrule this assignment of error.

III

{¶36} In his third assignment of error, appellant urges the trial court erred in finding reasonable efforts need not be expended to reunify the appellant with the child in its judgment entry dated April 23, 2009.

{¶37} The record does not contain a judgment entry dated April 23, 2009. Further, the court did not find reasonable efforts were not required to reunify appellant with his daughter. Instead, the court found the agency had made reasonable efforts, and we agree the record supports the court's determination.

{¶38} The third assignment of error is overruled.

IV

{¶39} In his fourth assignment of error, appellant urges the court's decision was not supported by the sufficiency and manifest weight of the evidence.

{¶40} Appellant asserts the court could not grant legal custody pursuant to R.C. 2151.353. However, the court did not grant legal custody to either parent or to any other person.

{¶41} The fourth assignment of error is overruled.

{¶42} For the foregoing, the judgment of the Court of Common Pleas, Juvenile Division, of Fairfield County, Ohio, is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE

WSG:clw 0804

[Cite as *In re A.D.*, 2009-Ohio-4236.]

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF: A.D.	:	
	:	JUDGMENT ENTRY
Defendant-Appellee	:	CASE NO. 2009-CA-26

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, of Fairfield County, Ohio, is affirmed. Costs to appellant

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE