[Cite as *In re M.E.V.*, 2009-Ohio-2408.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of:	:	
M. E. V., II,	:	No. 08AP-1097 (C.P.C. No. 04JU-1119)
(M. E. V.,	:	(REGULAR CALENDAR)
Appellant).	:	
In the Matter of:	:	
S. V.,	:	No. 08AP-1098 (C.P.C. No. 05JU-11150)
(M. E. V.,	:	(REGULAR CALENDAR)
Appellant).	:	
In the Matter of:	:	
M. V., II,	:	No. 09AP-02 (C.P.C. No. 04JU-1119)
(T. V.,	:	(REGULAR CALENDAR)
Appellant).	:	
In the Matter of:	:	
S. V. et al.,	:	No. 09AP-03 (C.P.C. No. 05JU-11150)
(T. V.,	:	(REGULAR CALENDAR)
Appellant).	:	

O P I N I O N

Rendered on May 21, 2009

Tammie M. Osler, for appellant. M.E.V.

Scott D. Schockling, for appellant T.V.

Robert J. McClaren, for appellee Franklin County Children Services.

Yeura R. Venters, Public Defender, and *David L. Strait*, for guardian ad Litem.

APPEALS from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

McGRATH, J.

{¶1} These are consolidated appeals by appellants, M.V. ("father") and T.V. ("mother"), from the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which that court terminated parental rights and awarded custody of their minor children to Franklin County Children Services ("FCCS") for the purpose of adoption. For the following reasons, we affirm.

{¶2} Father and mother have three children together: M.V., born on July 23, 1996; S.V., born on October 14, 1998; and T.V., born on July 28, 2000. In addition to M.V., S.V., and T.V., mother has two other children, D.R. and C.R., neither of whom are the subject of this appeal. Father is not the biological father of either D.R. or C.R. On January 26, 2004, a complaint was filed alleging that the children were dependent, and, on February 2, 2004, the court awarded FCCS temporary custody of the children. On March 25, 2004, the court found the children were dependent children, instituted court-ordered protective supervision by FCCS, and approved a case plan.

{¶3} On February 2, 2007, FCCS filed motions for permanent custody of the three children. The motions alleged the children could not or should not be placed with either parent within a reasonable time and that the children had been in the temporary custody of FCCS for 12 or more months of a consecutive 22-month period. Anita Bausch

("Bausch") was appointed as the children's guardian ad litem, and submitted her reports on August 23, 2007, in which she recommended that the court grant the request for permanent child custody ("PCC"). Following a three-day trial which occurred on July 24, September 23, and October 30, 2008, the trial court issued a decision and entry on December 3, 2008, in which it granted FCCS's motions for permanent custody of all three children. Mother and father instituted separate appeals. Mother advances three assignments of error as follows:

> I. The manifest weight of the evidence does not support the juvenile court's finding that the termination of Appellant T.V.'s parental rights is in the best interests of her children.
>
> II. The juvenile court lacked jurisdiction to consider the permanent custody petition since Franklin County Children Services ("FCCS") had had temporary custody of the children for more than one year when it filed for permanent custody of them.
>
> III. The juvenile court did not consider whether a family member could properly care for the children, in lieu of granting permanent custody to FCCS.

{¶4} Father advances three assignments of error, as follows:

> [1.] The trial court lacked jurisdiction to grant permanent custody.
>
> [2.] The trial court's granting of permanent custody is not supported by clear and convincing evidence and is against the manifest weight of the evidence.
>
> [3.] Appellant was denied effective assistance of counsel.

{¶5} Mother and father each advance an assignment of error that challenges the trial court's jurisdiction. Because jurisdiction is a threshold matter, we will address it first. Both mother and father argue that the delay between FCCS first obtaining temporary custody and the hearing to determine permanent custody deprived the court below of

jurisdiction to address permanent custody issues. Specifically, they argue that, pursuant to R.C. 2151.353(F),[1] the trial court lost jurisdiction to consider a PCC motion when FCCS had not filed it within one year of the filing of the original complaint, or the "sunset date."

{¶6} This court has addressed and rejected the identical argument in several cases: *In re J.W.*, 10th Dist. No. 07AP-791, 2008-Ohio-1423; *In re D.D.*, 10th Dist. No. 07AP-408, 2007-Ohio-5738; *In re Bowers*, 10th Dist. No. 02AP-347, 2002-Ohio-5084, discretionary appeal not allowed, 97 Ohio St.3d 1471, 2002-Ohio-6347; *In re Hogle* (June 27, 2000), 10th Dist. No. 99AP-944; *In re Ellis* (Mar. 9, 2000), 10th Dist. No. 99AP-725. The rationale underlying our decision in those cases stems from *In re Young Children*, 76 Ohio St.3d 632, 1996-Ohio-45, in which the Supreme Court of Ohio ruled that the passing of the so-called sunset date of R.C. 2151.353(F) does not divest the trial court of jurisdiction to make further dispositional orders which are deemed as necessary to protect children. The Supreme Court specifically granted ongoing jurisdiction when the problems which led to the original grant of temporary custody had not been resolved.

{¶7} In this case, as will be explained, infra, the problems that led to the original grant of custody to FCCS were not resolved, and, therefore, the trial court had jurisdiction to consider FCCS's motions for permanent custody. Moreover, and equally fatal, is that FCCS sought and received an extension of temporary custody, and FCCS's motions were filed 30 days before temporary custody was set to expire. Accordingly, we overrule mother's second assignment of error and father's first assignment of error.

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[1] R.C. 2151.353(F) provides, "[a]ny temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 [2151.41.5] of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section."

{¶8} Having determined that the trial court had jurisdiction, we now turn our attention to mother's first assignment of error and father's second assignment of error, in which the parties argue that the trial court's conclusion that PCC is in the children's best interest was against the manifest weight of the evidence. Both mother and father advance similar arguments, collectively asserting that they have either completed or substantially completed their respective case plans and have remedied the conditions that caused the children's removal.

{¶9} In order to terminate parental rights, the movant must prove, by clear and convincing evidence, one of the four factors enumerated in R.C. 2151.414(B)(1) and that the child's best interest is served by a grant of permanent custody to FCCS. *In re M.B.*, 10th Dist. No. 04AP-755, 2005-Ohio-986. Pursuant to R.C. 2151.414(B)(1)(d), a court may grant permanent custody of a child to a public children services agency if the court determines at the hearing, by clear and convincing evidence (1) that it is in the best interest of the child to grant permanent custody of the child to the agency, and (2) that the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period.

{¶10} Clear and convincing evidence requires that the proof " 'produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.' " *In re Estep* (Feb. 8, 2001), 10th Dist. No. 00AP-623, quoting *In the Matter of Coffman* (Sept. 7, 2000), 10th Dist. No. 99AP-1376, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. 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 Andy-Jones*, 10th Dist. No. 03AP-1167, 2004-Ohio-3312, ¶28, discretionary appeal not allowed, 103 Ohio St.3d 1429, 2004-Ohio-4524. Judgments supported by some competent, credible evidence going to all essential elements of the case are not against the manifest weight of the evidence. Id.; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, paragraph one of the syllabus.

{¶11} The findings of a trial court are presumed correct since, as the trier of fact, it is in the best position to weigh the evidence and evaluate the testimony. *In re Brown* (1994), 98 Ohio App.3d 337, 342; *In re Hogle*, supra. Moreover, "[e]very reasonable presumption must be made in favor of the judgment and the findings of facts [of the trial court]." *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. "[I]f the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the [juvenile] court's verdict and judgment." Id.

{¶12} In this case, no party disputes that FCCS met the second of the two elements under R.C. 2151.414(B)(1)(d), because all three children had been in FCCS's temporary custody for the requisite time period. The court's analysis does not focus upon whether the children can or should be placed with either parent within a reasonable time but, rather, whether permanent placement was in the children's best interest. *In re A.L.*, 10th Dist. No. 07AP-638, 2008-Ohio-800; *In re Brown*, 10th Dist. No. 04AP-169, 2004-Ohio-4044.

{¶13} In determining the best interest of the child, for purposes of a permanent custody motion, the court:

> * * * shall consider all relevant factors, including, but not limited to, the following:

> (1) 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;
>
> (2) 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;
>
> (3) 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 ending on or after March 18, 1999;
>
> (4) 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;
>
> (5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

R.C. 2151.414(D). As to the fifth factor listed above, the factors set forth in R.C. 2151.414(E)(7) through (11) include: (1) whether the parents have been convicted of or pled guilty to various crimes; (2) whether medical treatment or food has been withheld from the child; (3) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse; (4) whether the parent has abandoned the child; and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶14} At the time of the hearing, the ages of M.V., S.V., and T.V. were twelve, ten, and eight, respectively. According to Jane Kent ("Kent"), the family's caseworker from July 2005 to September 2007, FCCS first became involved with the family in 1992, and, since that time, there had been 30 referrals to the agency, which resulted in six case

openings. Those cases were opened due to "a consistent pattern of neglect [and] deplorable housing conditions," including trash, cockroaches, poor parenting skills, domestic violence, noncompliance with psychotropic medications, noncompliance with mental health counseling services, and illicit drug use. (Oct. 30, 2008 Tr. 11-12.)

{¶15} Upon FCCS's involvement in the present case, which occurred in 2004, a case plan was initiated with the goal of reunification. The case plan required the parents to be involved with the children's counseling as necessary, sign releases for service and mental health providers, maintain the home above a minimal standard of decency and cleanliness, ensure their bills were paid, maintain utilities in working order, complete psychological evaluations and follow through with recommendations, submit to drug and alcohol assessments, attend individual and marital counseling, complete parenting classes, and undergo sex offender assessment. Although mother and father completed some facets of their respective case plan, the record discloses that neither substantially completed their case plan.

{¶16} Mother and father married in 1995. Both parents have a plethora of mental health issues. Mother has been psychiatrically hospitalized on four separate occasions and has been diagnosed with post-traumatic stress disorder, major depressive disorder, and a personality disorder with narcissistic, borderline, and obsessive-compulsive features. Throughout mother's lifetime, she has been the victim of multiple instances of rape, sexual abuse, and physical abuse. She has also attempted suicide, the last attempt being when T.V. was less than a year old. Father has been diagnosed with bipolar disorder, with suicidal and homicidal tendencies, impulse control disorder, as well as anxiety. He has also attempted suicide. There have been episodes of domestic violence

between mother and father. Both parents have been prescribed medication for their mental health issues, although there are compliance issues with both medication and attending counseling services. Without medication, father presents a physical risk to his family, so an emergency plan had been developed for them should he cease taking his medication and become violent. It was also alleged that mother and father sexually abused S.V. and T.V.; both parents denied those allegations.

{¶17} Karla Kirtland-Schweyer ("Kirtland-Schweyer"), is a professional counselor at Family Life Counseling, who began working with S.V. in December 2007.[2] She assessed S.V. and made a diagnosis of child sexual abuse. Kirtland-Schweyer testified that S.V. has made progress in therapy, but will continue to need counseling "for quite some time because of the damage that she has expressed from the past abuse." (Sept. 23, 2008 Tr. 87.) According to Kirtland-Schweyer, who had observed S.V. with her parents during a visitation, S.V. played mediator between her parents and acted younger than her chronological age. It was also apparent to Kirtland-Schweyer that S.V. "really cares for her parents," but was concerned that S.V.'s treatment goals would be hindered by the weekly visits with her parents as evidenced by her impression that it "has been more difficult to stay on track due to setbacks from visitation." (Tr. 89, 90, 91.) Kirtland-Schweyer testified that S.V. is "doing very well in a structured atmosphere where she is being parented strongly." (Tr. 91.) She also opined that in order for S.V. to progress in her treatment, S.V. needs structure, which "produces security for S.V.; a home where she is not going to be in charge. Where she can be a child. Where someone will take care of her and nurture her and give her the support she needs." (Tr. 92.)

[2] S.V. has been receiving counseling at Family Life Counseling since 2005.

{¶18} Kent testified that D.R., M.V., S.V., and T.V. had originally been placed together in foster care, but were separated when D.R. and M.V. sexually abused S.V. and T.V. Kent observed approximately 50 percent of the parents' visitation with M.V., S.V., and T.V., and reported that there was role reversal between mother and the children; mother would tend to focus the visits upon her, present herself as a victim, and seek the children's approval. Kent testified that the children enjoyed visitation with their parents and were bonded to them and that S.V. and T.V. were especially bonded to each other. Kent opined that although there was bonding between the parents and children, she described the bonding as unhealthy and not in the children's best interest. She explained that during visitation, the parents would tell inappropriate things to the children, which, given their ages, would cause disruption in the children's lives, cause them to worry about their parents, as well as cause stress and anxiety. Kent testified that none of the issues that had caused the children's removal had been substantially improved or remedied. Kent recommended PCC for each child, and, in response to a question posed by father's attorney regarding whether his removal from the home would change her recommendation, Kent stated that her opinion would still be the same because she "would still be concerned for mother's ability to protect the children and care for the children." (Oct. 30, 2008 Tr. 58.)

{¶19} Kent described the conditions and issues facing each child upon their removal in 2004 and detailed the progress of each child since having been placed in foster care. Initially, M.V. had major behavioral problems for which he was on medication, as well as problems with school attendance; he is no longer on any major medication, his attendance has improved significantly, and he is getting good grades in school. When

S.V. first was placed, she was "very sexualized," masturbating, "fondling men's genitals," and would talk about "deep, dark secrets related to sexual acts. She was sexualized in her play and was constantly in some sort of a fantasy world where she would be thinking about being pregnant, having babies and going out on dates with older men." (Tr. 53.) Kent stated that at the time she ceased being the family's caseworker in December 2007, S.V. was "still dealing with some of these issues," but they were "not quite as severe as when she first came into care." (Tr. 53.) Like S.V., T.V. would also act out sexually, and he had issues with gross motor skills, but both areas have greatly improved while he has been in care.

{¶20} The testimony of Tara Smith ("Smith"), an FCCS caseworker assigned to the family in September 2007, was similar to that of Kent's. She testified regarding the parents' various case-plan failures and the difficulties encountered by the parents in following their respective case plans. Smith also related several events that depicted the parents' inability to appropriately parent their children. (Tr. 77-87.) She also observed that during visitations, the parents would have inappropriate discussions with their children and would not take redirection from social service aides. Further, although the parents appropriately supervised the children during visitation, they did not appropriately discipline the children. Smith described the bond between the parents and children as being unhealthy, and would "classify it as a role reversal where the children parent the parents." (Tr. 82, 107.)

{¶21} Smith also testified that none of the issues that led to the children's removal have been substantially improved or remedied. She stated that she was unaware of any steps the parents have taken to address the domestic violence issues that have plagued

their relationship. Nor had the parents remedied the family's housing issues; the parents had been evicted from one residence in March 2008, and, at the time of the hearing, mother could not recall her current address but only how to get there. Smith also described the parents' housing conditions as deplorable, and that despite the assistance of community service workers, including Smith, the parents have not been able to maintain a home with even minimal standards of decency. She also testified that the parents have not adequately addressed their mental health concerns; their counseling attendance was sporadic, and they appeared to lack the ability to sustain any follow through. The parents' finances were also a concern; they existed on M.V.'s check from social security income, and despite having received over $30,000 for a home that they sold in mid-2007, the money was all gone before Christmas.[3]

{¶22} Smith also explained that each child has made progress in their own respective treatment plans since having been placed in foster care. While M.V.'s relationship with his parents is unhealthy and disrespectful, his interaction with his foster family is appropriate; he is able to take direction from them and responds to discipline. Smith stated that M.V. is "very bonded" to his foster siblings and has gotten "very emotional" when speaking about how he will feel if he has to leave them. S.V.'s needs are being met in foster care, and her interaction with her foster family is very healthy and appropriate; she is bonded to them, her foster siblings, and especially to T.V. When S.V. was initially placed in care, there were concerns that she was mentally retarded, but since having been with her foster father, she has scored in the 90th percentile on standardized tests and enjoys tutoring the other children in the home. Smith described S.V.'s

[3] According to mother, father spent approximately $17,000 buying marijuana; father denies that allegation.

relationship with her parents, especially her mother, as one in which S.V. parents mother and feels like she needs to take care of her. T.V. is likewise bonded to his foster family and foster siblings, and his interaction with them is appropriate and healthy. T.V.'s bond with his parents is unhealthy, as they treat him more like a friend than a parent.

{¶23} Smith recommended PCC for each child for the purpose of adoption, explaining that "the homes that they are in are healthy relationships that will help them be productive and grow as children into productive healthy adults." (Tr. 115.) She further testified that, although there is a bond between the children and their parents, she does not believe "that it's a healthy bond," nor did she believe that the "parents have the ability to care for any of the children and this is because of the inconsistency and lack of housing and keeping the house clean, the financial situation, [and] the instability of the parents marriage." (Tr. 116.)

{¶24} Bausch, the children's guardian ad litem, was familiar with the family, having been involved with them on the various cases that had been opened by FCCS over the years. Bausch interviewed the children and discussed the PCC motion with them, and each child expressed his or her wishes regarding the same. M.V. told Bausch that he does not wish to be adopted and "would like to return to his parents because he loves them." (Tr. 128.) With respect to S.V. and T.V., both expressed the desire to be able to live with both families (biological and foster). Bausch explained that it was "very common for children to say that they would like to return home to their parents because they know that they can survive because they have. Even if it has been a home that has been abusive and neglectful, they would rather return to something they know as opposed to go say to an adoptive home that is an unknown." (Tr. 129.) Although the

children were capable of expressing their wishes, Bausch did not believe that they were capable of assessing what was in their best interests "[b]ecause they don't have an understanding. * * * They have [a fantasy] that their parents are like every other parent that they see on T.V., the good mom and dad, or that the family home situation, if they return to their mom and dad, will be like their current living situation." (Tr. 132-33.)

{¶25} The children's wishes did not alter Bausch's recommendation, which was that the award of permanent custody to FCCS was in the children's best interest. Bausch provided her reasons, explaining:

> These children have a need for permanency so that they can move on in their lives. They need to know for certain where they are going to be, where they are going to live. It is the only way that they will be able to move forward in therapy to resolve the issues that they have, such as the neglect and the abuse. I do not believe that it would be in their best interest to return home to parents who are in denial that they are victims of sexual abuse, parents who have not rectified any of the situations that caused for their removal.

(Tr. 134.) In describing the concerns she would have if the children were returned to their parents, Bausch testified that:

> That they once again would be victims of sexual abuse, that their parents could not adequately provide housing for them, could not adequately provide shelter, clothing, food, meet their educational needs, make sure that they were to get to school and help them with their homework and see that the proper school supplies and that type of thing were provided for them.

(Tr. 134.)

{¶26} In the present case, the trial court's decision indicates it considered the best interest factors. Upon review of the record, it is clear that the record supports the trial court's finding that granting the motion for permanent custody is in the children's best

interest. The testimony of Kirtland-Schweyer, Kent, Smith, and Bausch support the trial court's determination. The record makes clear that both mother and father failed to complete the majority of the case plan provided by FCCS, and they simply cannot meet even the most basic needs of their children. It is clear from the record that both mother and father love their children to the best of their limited abilities, but the consequence of such love, as expressed through the prism of chronic mental illness, compels us to agree with the trial court's conclusion that "there is no chance preservation of parental rights can be in the best interest of the children. The experience the children would have by living with their parents would leave the children with no constructive experience or idea of how to manage a family, experience adequate care by parents, and no idea of nurturing and stimulation essential to the emotional, educational and physical care and treatment of a child." (Judgment entry, 2.)

{¶27} Because the trial court's judgment is supported by the evidence in the record, we overrule mother's first and father's second assignments of error.

{¶28} In mother's third assignment of error, she asserts that the trial court should not have granted permanent custody of the children without requiring a more diligent effort to determine whether the children could be placed with their paternal grandmother. We find this argument is without merit.

{¶29} A trial court is not required to consider placing a child with a relative prior to granting permanent custody to an agency, as relatives seeking custody of a child are not afforded the same presumptive rights that a parent receives. *In re D.T.*, 10th Dist. No. 07AP-853, 2008-Ohio-2287; *In re D.S.*, 10th Dist. No. 07AP-479, 2007-Ohio-6781; *In re Zorns*, 10th Dist. No. 02AP-1297, 2003-Ohio-5664, ¶28. Indeed, a trial court is not even

required to determine whether a relative is a suitable placement option. *In re J.S.*, 10th Dist. No. 05AP-615, 2006-Ohio-702, ¶34.

{¶30} In this case, the record discloses that FCCS considered suitable relative placements, including the children's paternal grandmother. Smith testified as to the following:

> Q. And since you have received the case, have you asked the parents for the names of any other relatives who could be considered for placement of these children?
>
> A. Yes.
>
> Q. And how often have you asked the parents for this information?
>
> A. Five or six times I would say.
>
> Q. And were the names of any relatives provided to you?
>
> A. Yes.
>
> Q. And I guess who – who was mentioned and, you know, and why have the children not been placed with them?
>
> A. Okay. Parents mentioned some relatives in the southern part of the state where Mark is apparently from. However, I was never giving – never given any specific names or addresses of people and Mark, the first, mentioned that nobody with the last name Vest in the area can – can be in that area without being arrested due to family history. Also Mark's mom, grandma Vest, was mentioned at one time. However, her daughter and granddaughter decided to continue living with her and she cannot take the Vest children at this time. No other information was given to me about the appropriateness of that placement and no address was given.
>
> Q. Okay. Did any other person ever provide you with a name of any relative who could be considered for placement?
>
> A. No.

> Q. And have any relatives come forward and expressed an interest in the children or ever filed a motion for custody of these children?
>
> A. No.
>
> Q. Okay. Based upon your extensive knowledge and history of the case, do you believe that there are any appropriate relatives out there who could care for these children's needs?
>
> A. No, I do not.

(Tr. 68-69.)

{¶31} There is no evidence in the record that the children's paternal grandmother desired to have the children placed with her; she did not file a motion for custody, nor was she called by either the mother or father as a witness to testify at the hearing. In fact, the above-cited testimony suggests the converse is true. Thus, we do not find that the trial court abused its discretion with respect to this issue. Accordingly, mother's third assignment of error is overruled.

{¶32} In father's third assignment of error, he argues that he received ineffective assistance of counsel when his attorney questioned him regarding whether he would be willing to sever ties with his children if such would result in their placement with mother, as opposed to permanent custody being granted to FCCS.

{¶33} In order to prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, appellants must show that "counsel's performance fell below an objective standard of reasonableness and that prejudice arose from counsel's performance." *State v. Reynolds* (1998), 80 Ohio St.3d 670, 674. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that

the trial cannot be relied on as having produced a just result. *Strickland*, at 686. Thus, a two-part test is necessary to examine such claims. First, father must show that his counsel's performance was objectively deficient by producing evidence that counsel acted unreasonably. *State v. Keith* (1997), 79 Ohio St.3d 514, 534. Second, he must show that, but for his counsel's errors, there is a reasonable probability that the results of the trial would be different. Id. "A reasonable probability is a probability sufficient to undermine the confidence in the outcome." *State v. Carpenter* (1996), 116 Ohio App.3d 615, 622.

{¶34} The burden of showing ineffective assistance of counsel is on the party asserting it. *State v. Smith* (1985), 17 Ohio St.3d 98. Trial counsel is entitled to a strong presumption that all decisions fall within the wide range of reasonable professional assistance. *State v. Sallie* (1998), 81 Ohio St.3d 673, 675. Tactical or strategic trial decisions, even if ultimately unsuccessful, do not generally constitute ineffective assistance of counsel. *State v. Carter* (1995), 72 Ohio St.3d 545, 558 ("judicial scrutiny of counsel's performance is to be highly deferential, and reviewing courts must refrain from second-guessing the strategic decisions of trial counsel"); *Carpenter*, supra, at 626 (court of appeals is to "presume that a broad range of choices, perhaps even disastrous ones, are made on the basis of tactical decisions and do not constitute ineffective assistance").

{¶35} In this case, however, we need not address the two prongs of an ineffective assistance claim in the order set forth in *Strickland*. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim

on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Id. at 697.

{¶36} Father contends that he was prejudiced by his counsel's line of questioning because his responses "could have" been "misconstrued" by the trial court as being "flippant and uncaring," and that the "court's judgment could have been swayed by [father's] revelations that he would be willing to remove himself from his children's lives." (Father's appellate brief, 14.) We disagree with father's assertion for two reasons. First, because we have already determined that there was sufficient evidence for the trial court to determine that FCCS had established, by clear and convincing evidence, that the best interests of the children were served by placing them in the permanent custody of FCCS, father cannot demonstrate that he was prejudiced by his counsel's line of questioning. And, second, the questions asked of father by his counsel clearly fall within the category of trial strategy. Accordingly, we overrule father's third assignment of error.

{¶37} For the foregoing reasons, all of mother's and father's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is hereby affirmed.

Judgment affirmed.

BROWN and KLATT, JJ., concur.

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