

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

In re:	:	
K.L. et al.,	:	No. 13AP-218 (C.P.C. No. 10JU-06-9005)
(K.L.,	:	(REGULAR CALENDAR)
Appellant).	:	
In re:	:	
K.L. et al.,	:	No. 13AP-231 (C.P.C. No. 10JU-06-9005)
(T.S.,	:	(REGULAR CALENDAR)
Appellant).	:	

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D E C I S I O N

Rendered on August 13, 2013

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*Giorgianni Law LLC, and Paul Giorgianni, for appellant K.L.*

*Yeura R. Venters, Public Defender, and Allen V. Adair, for appellant T.S.*

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

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

CONNOR, J.

{¶ 1} Appellants, T.S. ("Mother") and K.L. ("Father"), appeal from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile

Branch, granting appellee, Franklin County Children Services' ("FCCS") motion for permanent custody of K.L. and K.L.

### **I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} On March 19, 2010, Mother gave birth to twin sons K.L. and K.L. Blood work revealed that one of the twins was born with marijuana in his system and the other was positive for "Benzo," which is the common name for a class of pain medication. Prior to the birth of the twins, Mother had entered into a voluntary case plan with FCCS. The stated grounds for the case plan were Mother's drug use, parental suitability, and mental health issues. Mother had been a party to a similar case plan with respect to each of her other three children, due to concerns with drug use, parental suitability, and mental health issues. A few months before the birth of K.L. and K.L., Father was convicted of a drug-related felony and confined to a state prison.

{¶ 3} Pursuant to a temporary custody order, FCCS took custody of the twins on March 23, 2013 and placed them under the care of foster parents, a married couple with children of their own. Christian St. Claire, a child protection specialist employed by the Buckeye Ranch, was the designated caseworker when K.L. and K.L. were born. According to St. Claire's testimony, the plan requirements were as follows:

[Attorney McClaren:] Now regarding the case plan. Do you recall what was included in the case plan for the mother to complete?

[St. Claire:] Yes.

[Attorney McClaren:] And what were those items?

[St. Claire:] She needed to complete a drug and alcohol assessment and follow the recommendations from that; parenting classes; a psychological evaluation; stability which included housing and income. And with the psychological evaluation mom had mental health concerns so we wanted her to engage in treatment for those service - - for those issues as well.

(Jan. 23, 2013 Tr. 81-82.)

{¶ 4} St. Claire testified that, during the time she was on the case, Mother never completed a drug assessment, never completed a drug treatment program, never

submitted to a mental health assessment, and never demonstrated sobriety. In March 2011, Mother spent two weeks in county jail on a drug-related charge.

{¶ 5} In May 2011, Abigail Cantrell, a case manager with the Parents and Family Services Network, inherited the case plan from St. Claire. Cantrell managed the case until FCCS moved for a permanent custody determination on July 20, 2011. Cantrell testified that Mother did not make progress on the case plan during the two-month period she worked with her. According to Cantrell, Mother tested positive for marijuana and she was not receiving treatment. In August 2011, Mother pleaded guilty to deception to obtain dangerous drugs, a third degree felony.

{¶ 6} Gay Lynn McKenzie, a child welfare caseworker, managed the case for FCCS. McKenzie testified that she took over the case, the case plan was as follows:

[Attorney McClaren:] Now when you've been the caseworker what - - what elements have been on the case plan?

[McKenzie:] Mom needs to complete the alcohol and drug assessment and treatment for - - the recommendations of that assessment. She needs to do random drug screens; parenting classes; a psychological evaluation; obtain and maintain stable housing and legal income.

[Attorney McClaren:] Have you sent mother letters regarding the case plan?

[McKenzie:] Yes.

[Attorney McClaren:] And what's the purpose in sending her a letter?

[McKenzie:] To remind her to keep it in the forefront of her mind of the things that need to be completed on her case plan - - for - - .

[Attorney McClaren:] And do you know - - I'm sorry. Go ahead.

[McKenzie:] - - for reunification to occur.

(Jan. 23, 2013 Tr. 140-41.)

{¶ 7} McKenzie testified that, during the period of time she worked the case, Mother completed a mental health assessment and a parenting class, but she never

completed a drug treatment program and never demonstrated sobriety. McKenzie also had concerns about the stability of Mother's housing situation and she was unable to obtain proof of Mother's employment.

{¶ 8} On August 12, 2012, Mother took up residence in a five-bedroom home at 360 Governor's Square in Columbus. The home is owned by Mother's oldest child's paternal grandmother. Mother lives there with the grandmother, child, and the child's father.

{¶ 9} In Fall 2012, Mother was incarcerated for a short time due to a probation violation before she was transferred to Maryhaven for treatment. She currently receives outpatient counseling services two days per week from Southeast Mental Health Center. She has recently seen a psychiatrist who diagnosed post-traumatic stress disorder and anxiety. In spite of Mother's drug dependency and mental health issues, she has been consistent in exercising her visitation with the twins.

{¶ 10} On or about the Thanksgiving holiday in 2012, McKenzie was contacted by Toya Freeman who is the mother of another child by the twins' father. Freeman told McKenzie that she was interested in gaining custody of her child's half-brothers, K.L. and K.L.

{¶ 11} On January 25, 2013, the trial court conducted an evidentiary hearing on FCCS's motion for permanent custody. On March 1, 2013, the trial court ordered that K.L. and K.L. be "permanently committed to **FRANKLIN COUNTY CHILDREN SERVICES** for the purpose of adoption." (Emphasis sic.) (Permanent Custody Judgment Entry, 6.)

{¶ 12} Both Mother and Father have appealed to this court from the judgment of the trial court.

## II. STANDARD OF REVIEW

{¶ 13} 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. Judgments supported by some competent, credible evidence as to each of the essential elements of the case are not against the manifest weight of the evidence. *In re R.G.*, 10th Dist. No. 12AP-748, 2013-

Ohio-914, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), paragraph one of the syllabus.

{¶ 14} Clear and convincing evidence is that degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the facts to be established. *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. It is more than a mere preponderance of the evidence but does not require proof beyond a reasonable doubt. *Id.*

### **III. ASSIGNMENTS OF ERROR**

{¶ 15} Mother assigns the following assignments of error for our review:

[I.] The judgment of the trial court was not supported by the evidence and was against the manifest weight of the evidence.

[II.] The judgment of the trial court must be reversed as the record does not include a finding that Franklin County Children Services, as the agency seeking permanent custody, made reasonable efforts to reunify the family as required by In re C.F., 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816.

{¶ 16} In addition to joining in Mother's assignments of error, Father asserts the following additional assignments of error:

[I.] The Juvenile Court erred by denying Father participation in the hearing that resulted in the termination of his parental rights.

[II.] Father was denied effective assistance of counsel by his counsel's failure to introduce his testimony by way of deposition or telephone.

[III.] The Juvenile Court erred by overruling Father's motion to postpone the hearing.

[IV.] The manifest weight of the evidence does not support a finding under the "clear and convincing evidence" standard that termination of parental rights is in the Twins' best interest at this time.

[V.] FCCS has not made reasonable efforts to reunify the Twins with Mother.

{¶ 17} In Mother's first assignment of error and Father's fourth assignment of error, they contend that the trial court's decision to terminate their parental rights is not supported by clear and convincing evidence and is against the manifest weight of the evidence. We disagree.

{¶ 18} A decision to award permanent custody requires the trial court to take a two-step approach. *In re R.G.* First, a trial court must determine if any of the factors set forth in R.C. 2151.414(B)(1) apply. R.C. 2151.414(B)(1) provides, in relevant part:

(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.

(b) The child is abandoned.

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

(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.

{¶ 19} Mother and Father do not dispute that K.L. and K.L. have been in the custody of FCCS for 12 months or more of a consecutive 22-month period prior to the hearing. Indeed, the trial court found that the circumstances described in R.C.

2151.414(B)(1)(d) were applicable. Additionally, the trial court determined that Father abandoned the twins. *See* R.C. 2151.414(B)(1)(b).

{¶ 20} Once the trial court made its threshold findings, it is required to determine whether a grant of permanent custody to FCCS is in the best interest of the child. The burden of proof falls upon FCCS to prove by clear and convincing evidence that an award of permanent custody is in the child's best interest. R.C. 2151.414(B)(1). *In re R.G.*

{¶ 21} With respect to the determination of the children's best interests, the trial court must analyze the following factors:

(1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers, 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 GAL, 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 12 or more months of a consecutive 22-month period, (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, and (5) whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

*In re R.G.* at ¶ 9.

{¶ 22} On March 1, 2013, the trial court found the following: that K.L. and K.L. had no significant bond with either Mother or Father; that K.L. and K.L. were very bonded to one another; that there are no relatives who have bonded with K.L. and K.L.; and that both K.L. and K.L. are very bonded to their foster parents.

{¶ 23} The court concluded that "[a] legally secure permanent placement **cannot** be achieved without a grant of permanent custody to Franklin County Children Services." (Emphasis sic.) (Permanent Custody Judgment Entry, 6.) Other significant findings by the trial court were that "mother cannot stop her drug use as evidenced by her consistent use of drugs knowing that she must be drug free for custody," and that "father has abandoned the children as a result of over 90 days without contact." (Permanent Custody Judgment Entry, 8, 7.)

{¶ 24} We agree with the trial court's assessment of the evidence.

{¶ 25} Mother admitted that she used marijuana and crack cocaine prior to the birth of the twins. She also acknowledged her longstanding and ongoing addiction to the prescription painkiller Percoset and the anti-anxiety medication Xanax. She has used both drugs without a valid prescription. Although Mother eventually submitted to a drug and alcohol assessment, she has never completed any of the numerous inpatient and outpatient treatment programs she has entered. She was not admitted to drug court in 2010 due to non-compliance with the threshold requirements for entry, and she is now ineligible due to her felony conviction.

{¶ 26} Mother acknowledged that she was required to undergo a drug screening once per month in connection with her criminal case and once per month pursuant to the case plan. St. Claire stated that Mother never demonstrated sobriety in the two years she was working on the case.

{¶ 27} McKenzie testified that Mother completed only seven of the sixty-four drug screenings she was required to take in connection with her custody case. McKenzie reminded Mother, both in person and in numerous correspondence, that she was required to complete the drug screenings as part of the case plan. McKenzie informed the trial court that FCCS considers a missed drug screening as a positive test. Indeed, Mother admitted that her habit was to skip a scheduled drug screening if she knew that she would test positive. In spite of this, Mother still tested positive on a number of occasions. McKenzie told the trial court that she has not seen evidence of Mother's sobriety. At the January 24, 2013 hearing, Mother stated that she had not submitted to a drug screening since August 2012.

{¶ 28} Taken as a whole, in determining the best interests of the twins, we agree with the trial court's conclusion that Mother's unresolved addiction to illegal drugs weighs heavily against her in her efforts to regain custody. Indeed, the evidence shows a disturbing pattern whereby Mother enters an outpatient program, fails to stay sober, and then enters a detoxification program. The evidence shows that she left outpatient drug counseling to enter a detoxification program both in July 2011 and July 2012. Mother's history also reveals lengthy periods of time in the last several years where she has received no treatment at all and has not submitted to any drug screenings.

{¶ 29} The trial court noted that Mother has had seven different residences in the last three years. Although Mother currently resides in a five bedroom house owned by her oldest child's grandmother, there is no written lease agreement. Mother's employment history shows that she has had a few part-time jobs over the last several years with only a brief period of full-time employment. Mother admitted that she has provided little documentary support for her employment because she is paid "under the table."

{¶ 30} Although we find that the trial court was mistaken when it found that mother did not benefit from parenting classes, this relatively minor mistake could not have impacted the outcome of the case, given the overwhelming evidence in support of the trial court's decision.

{¶ 31} Mother asserts that her recent progress toward completion of the case plan warrants a continuation of the current temporary custody arrangement. FCCS has acknowledged that Mother has completed parenting classes and that she has recently sought and received psychiatric care. However, clear and convincing evidence establishes that Mother cannot meet the need for a legally secure placement. *See* R.C. 2151.414 (D)(1)(d).

{¶ 32} On the other side of the equation, the evidence regarding the current custody arrangement convinces us that the trial court carefully weighed the evidence in determining the best interests of K.L. and K.L. The twins have been in the same foster home since they were three days old. The evidence shows that K.L. and K.L. are strongly bonded with each other and with their foster parents' other children. With regard to the bond with the foster parents, St. Claire testified as follows:

[Attorney McClaren:] And while you were the caseworker were the twins in the same placement?

[St. Claire:] Yes.

[Attorney McClaren:] They were in that placement for the whole time?

[St. Claire:] From - - since birth, yes.

[Attorney McClaren:] Did you get an opportunity to see them in the foster home?

[St. Claire:] Yes.

[Attorney McClaren:] And what did you see in the foster home?

[St. Claire:] I mean, the children are very bonded and attached to the children and the foster parents in the home. They've been here - - been there forever, so - - since birth. So they are really attached - - you know - - they - - they're treated just like the other kids in the home in regards to their - - their care and things like that.

[Attorney McClaren:] Do you undertake monthly visits to the foster home?

[St. Claire:] Yes.

[Attorney McClaren:] And were there - - was it a foster parent or foster parents?

[St. Claire:] Foster parents - - a married couple with children.

[Attorney McClaren:] And did you have a chance to see the twins interact with them?

[St. Claire:] Yes.

[Attorney McClaren:] And what was that interaction?

[St. Claire:] The - - the children are, like I said, are very bonded with both the mother and the father foster parent in the home. They're also bonded - - very bonded with the children in the home as well. You know, in the beginning they would cry if the foster parents left them.

(Jan. 23, 2013 Tr. 93-94.)

{¶ 33} The testimony of the caseworkers involved in this case, as well as testimony of Jessika Gualtieri the guardian ad litem, corroborates St. Claire's assessment. (*See* Tr. 127, 156.) Each of these witnesses recommended permanent placement with FCCS pending an adoption by the foster parents. While Gualtieri expressed sympathy for the Mother and Father, she agreed that permanent placement and adoption by the foster parents was in the best interests of both K.L. and K.L., and that it would be detrimental to the children to remove them from their foster parents. (Jan. 23, 2013 Tr. 184, 205.)

{¶ 34} Mother testified that she is on a waiting list for the six-month inpatient drug treatment program at Maryhaven. However, the court notes that, in January 2012, the trial court continued the permanent custody hearing in order for Mother to undergo similar treatment, but that Mother failed to complete the program.<sup>1</sup> The trial court concluded that K.L. and K.L. cannot afford to wait any longer. We agree.

{¶ 35} In the final analysis, Mother's unresolved drug addiction, the instability in her housing situation and her inability to secure full-time employment, combined with her mental health issues, foreclose the possibility of her regaining custody of K.L. and K.L.

{¶ 36} With respect to Father, as the court noted, he is serving a term of imprisonment as a result of a drug-related felony conviction. His scheduled release date is in 2019. Consequently, Father has no stable family residence, no employment, and he is completely unable to care for K.L. and K.L. While Father's absence from his children is not voluntary in the strictest sense, it was his conscious decision to engage in criminal conduct that resulted in his incarceration. Accordingly, the trial court did not err when it determined that Father had abandoned K.L. and K.L.

{¶ 37} In consideration of all of the factors, including those expressly considered by the trial court, we find the trial court's judgment was not against the manifest weight of the evidence. Some competent, credible evidence as to each of the essential elements of the case supports the judgment of the trial court. Therefore, Mother's first assignment of error and Father's fourth assignment of error shall be overruled.

{¶ 38} In Mother's second assignment of error and Father's fifth assignment of error, they argue that the trial court failed to determine whether FCCS had made "reasonable efforts" to reunify the family.

{¶ 39} Pursuant to R.C. 2151.419(A)(1), there are certain instances in child custody proceedings when FCCS is required to show that it made reasonable efforts to reunify the child with his or her biological parents. *See In re R.G.* However, the Supreme Court of Ohio has held the statute requiring reasonable efforts does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such

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<sup>1</sup> At the August 23, 2012 proceeding, Mother represented to the trial court that if she failed in her next attempt to stay clean, she would no longer contest the custody matter. (Aug. 23, 2012 Tr. 43.)

motions under R.C. 2151.414. *Id.*, citing *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 41. "This does not mean that the agency is relieved of the duty to make reasonable efforts." *In re C.F.* at ¶ 42. In fact, "[a]t various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification." *Id.* "If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶ 43.

{¶ 40} In a decision dated September 9, 2010, the magistrate found that FCCS made reasonable efforts to prevent the removal of the children from Mother's custody. The trial court adopted the magistrate's decision. Similarly, in the March 14, 2011 findings of fact and conclusions of law, the magistrate found that FCCS made "reasonable efforts to prevent the continued removal of the child[ren] from home." Accordingly, to the extent that a finding on the issue of "reasonable efforts" was required by R.C. 2151.419, the trial court made such a finding.

{¶ 41} Mother's second assignment of error and Father's fifth assignment of error shall be overruled.

{¶ 42} In his first assignment of error, Father maintains that the trial court violated his constitutional right of due process by terminating his parental rights without providing him a reasonable opportunity to be present and to give testimony at the hearing.<sup>2</sup>

It is well recognized that the right to raise a child is a basic and essential civil right. *In re Hayes* (1997), 79 Ohio St.3d 46, 679 N.E.2d 680. A parent must be given every procedural and substantive protection the law allows prior to parental rights being terminated. *Id.* Due process includes a hearing upon adequate notice, assistance of counsel, and under most circumstances, the right to be present at the hearing. *In re Thompson* (Apr. 26, 2001), Franklin App. No. 00AP-1358.

*In re M.B.*, 10th Dist. No. 04AP-755, 2005-Ohio-986, ¶ 5.

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<sup>2</sup> As will be discussed in connection with Father's second assignment of error, trial counsel did not move the court for an order to convey Father to the January 25, 2013 proceedings.

{¶ 43} In determining whether parental due process rights have been infringed, courts generally apply the test set forth by the United States Supreme Court in *Mathews v. Eldridge*, 424 Ohio St. 319 (1976). See, e.g., *In re Sprague*, 113 Ohio App.3d 274 (12th Dist.1996); *In re C.M.*, 9th Dist. No. 23606, 2007-Ohio-3999. Under the *Mathews* test, a court must consider and weigh: (1) the private interest affected, (2) the risk of erroneous deprivation and the probable value of additional safeguards, and (3) the governmental burden of additional safeguards. *Id.* at 335.

{¶ 44} Father was incarcerated when the twins were born and he is not scheduled to be released until 2019. He has met the twins only once, when McKenzie brought them to the prison for a visit in January 2013. Under the circumstances, Father's loss of rights pale when measured against the best interests of K.L. and K.L. Similarly, Father's lack of contact with the twins and his inability to be physically present until 2019 means that there was little risk of an error in the proceedings as a result of his absence. Finally, while the record is silent regarding the governmental burden, the court is well aware that there is a burden in terms of time, money, and man power associated with conveyance of a prisoner from a state penitentiary to a court proceeding.

{¶ 45} Under the circumstances we cannot find that Father's parental rights were terminated without due process of law. Father's first assignment of error shall be overruled.

{¶ 46} In his second assignment of error, Father contends that the failure of his counsel to offer his testimony either by deposition or by other electronic means constitutes ineffective assistance of counsel. We disagree.

{¶ 47} A parent who is a party in juvenile court proceedings has a right to effective assistance of counsel. R.C. 2151.352; Juv.R. 4(A); *In re C.P.*, 10th Dist. No. 08AP-1128, 2009-Ohio-2760, ¶ 56. To succeed on his claim of ineffective assistance of counsel, Father must satisfy the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668 (1984). First, Father must demonstrate that trial counsel's performance was deficient. *In re C.P.* at ¶ 58.

{¶ 48} Counsel first appeared in the action on Father's behalf at the permanent custody hearing on August 23, 2012. Although counsel informed the court that Father's absence was not voluntary due to incarceration, counsel did not move the court for an

order to convey him to the hearing scheduled for January 25, 2013. The record does not reveal any request by counsel for leave to facilitate Father's testimony by way of deposition or by other means. Father argues that counsel was ineffective inasmuch as he failed to seek leave of court in order to perpetuate his testimony.

{¶ 49} We note that Father's counsel argued Father's case to the court, interposed objections where appropriate, and examined witnesses in an effort to elicit evidence favorable to his client. Thus, counsel's performance at the hearing was competent.

{¶ 50} However, even if we assume that counsel's failure to request alternative means for Father to participate in the custody proceedings constitutes deficient performance, Father must still demonstrate that there exists a reasonable probability that, but for counsel's error, the result of the trial would have been different. *In re C.P.* Several witness testified that Father desired to be part of his children's lives and that he wished for the opportunity to raise his twin boys. Mother testified that Father encouraged her to stay sober so that she could regain custody of the twins, and that he enlisted Freeman's help as a means to keep custody of the twins in the family.

{¶ 51} Thus, the trial court was well aware of Father's wishes. Father has not provided the court with insight into the additional testimony, if any, he would have offered beyond that conveyed to the trial court by other witnesses. Accordingly, there is no basis to conclude that the result would have different had his testimony been offered

{¶ 52} In short, Father has failed to satisfy his burden of showing prejudice. Accordingly, Father's second assignment of error shall be overruled.

{¶ 53} In his third assignment of error, Father contends that the trial court erred when it denied his motion for a reasonable continuance of the evidentiary hearing.

"The grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge." *State v. Unger* (1981), 67 Ohio St.2d 65, 67, 423 N.E.2d 1078. Therefore, an appellate court must not reverse a trial court's decision to deny a motion for continuance unless it finds that the trial court abused its discretion. *Id.* See also *In re B.G.W.*, 10th Dist. No. 08AP-181, 2008-Ohio-3693, ¶ 23. "The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* [(1983)], 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

*In re J.C.*, 10th Dist. No. 10AP-766, 2011-Ohio-715, ¶ 37.

{¶ 54} Father contends that, absent a continuance, the trial court was unable to properly consider Freeman's emergence as a potential custodian for the twins. FCCS argues that a third continuance was not warranted.

[T]he Supreme Court of Ohio states that "[i]n evaluating a motion for a continuance, a court should note, inter alia: [1] the length of the delay requested; [2] whether other continuances have been requested and received; [3] the inconvenience to litigants, witnesses, opposing counsel and the court; [4] whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; [5] whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and [6] other relevant factors, depending on the unique facts of each case."

*Id.* at ¶ 38, quoting *State v. Unger*, 67 Ohio St.2d 65, 67-68 (1981).

{¶ 55} Upon consideration of the *Unger* factors, we are convinced that the trial court did not abuse its discretion. The court notes that this case was continued on three prior occasions, once at Father's request and twice upon Mother's motions. FCCS opposed Mother's second motion arguing that she had not made any progress on the case plan and that a continuance would only delay permanent placement of the twins. FCCS opposed Father's motion for similar reasons.

{¶ 56} While Freeman's young son is a half-brother to K.L and K.L., there is no evidence of a bond between the twins and either Freeman or her son. Moreover, Freeman knew that the twins were in foster care but made no effort to become involved in the custody case until shortly before the final hearing, more than two years after temporary placement. McKenzie testified that she instructed Freeman to report to the office for fingerprinting as the first step in getting involved in the process but that Freeman had not yet done so. Consequently, while Freeman's recent efforts to become involved in the matter may be laudible, they are untimely and ineffectual.

{¶ 57} In short, under the circumstances that existed on the date of the hearing, the trial court did not abuse its discretion in denying the requested continuance and proceeding to the final determination of custody. Accordingly, Father's third assignment of error shall be overruled.

**VI. CONCLUSION**

{¶ 58} Having overruled Mother's two assignments of error, and Father's five assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

*Judgment affirmed.*

BROWN and SADLER, JJ., concur.

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