

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

IN THE MATTER OF:	:	O P I N I O N
J. L. C.	:	
	:	CASE NO. 2010-T-0085
	:	

Civil Appeal from the Trumbull County Family Court, Juvenile Division, Case No. 1997 JC 005.

Judgment: Affirmed.

George E. Gessner, Gessner & Platt Co., L.P.A., 212 West Main Street, Cortland, OH 44410 (For Appellants-Calvin and Rhonda Cadwallader).

Craig H. Neuman, Trumbull County Children Services Board, 2282 Reeves Road., N.E., Warren, OH 44483 (For Appellee-Trumbull County Children Services Board).

Robert N. Harvey, Jr., The Commerce Building, 201 East Commerce Street, #346, Youngstown, OH 44503 (Guardian ad litem).

DIANE V. GRENDELL, J.

{¶1} Appellants, Calvin and Rhonda Cadwallader, appeal from the judgment of the Trumbull County Family Court, Juvenile Division, awarding permanent custody of their child, J.C., to Trumbull County Children Services Board (TCCSB). For the following reasons, we affirm the decision of the trial court.

{¶2} The Cadwalladers are the biological parents of three children, E.C., born on June 16, 1992, A.C., born on August 5, 1999, and J.C., born on July 9, 2007. TCCSB has been involved with the Cadwallader children since 1997.

{¶3} On March 12, 1997, E.C. was adjudicated dependant based on findings by the court that there was a lack of adequate parenting, as well as alcohol and drug abuse by the Cadwalladers. On January 14, 2004, the magistrate found that both E.C. and A.C. were dependent because of the Cadwalladers' continuing drug and alcohol problems, mental health problems, and parenting issues. The trial court adopted this decision on March 18, 2004.

{¶4} TCCSB filed a motion to terminate its temporary custody of E.C. and A.C. and to grant legal custody to their maternal grandparents, Tom and Hope Robison. On May 13, 2005, all parties, including the Cadwalladers, agreed to place E.C. and A.C. in the legal custody of the Robisons. On May 24, 2005, the trial court's Judgment Entry granted legal custody to the Robisons. Since then, E.C. and A.C. have remained in the Robisons' custody, with the Cadwalladers having one to two hours of visitation per week. The court, in its May 24 Entry, allowed the Cadwalladers to achieve more visitation by following certain recommendations, but the Cadwalladers have never completed these recommendations or received increased visitation time

{¶5} On July 7, 2007, J.C. was born. On July 13, 2007, the court granted ex parte custody of J.C. to TCCSB. A Shelter Care Hearing was held on July 16, 2007, and on August 9, 2007, the court ordered that custody of J.C. was to remain with TCCSB.

{¶6} On September 7, 2007, J.C. was adjudicated dependant by stipulation of the parties, pursuant to R.C. 2151.04(D).

{¶7} J.C. has never lived with the Cadwalladers and has lived with a few different foster families over the past 3 years, most recently living with a foster-to-adopt

family that was willing to adopt her. Since birth, the Cadwalladers have had visitation with J.C. limited to a two-hour, supervised visit each week.

{¶8} On June 10, 2009, TCCSB filed a Motion for Permanent Custody with respect to J.C.

{¶9} Hearings on TCCSB's Motion were held on October 9, 2009, February 19, 2010, and February 22, 2010. The following testimony was given at the hearings and during a deposition.

{¶10} Bob Harvey, J.C.'s guardian ad litem, testified as to the contents of his written report. Harvey recommended that permanent custody of J.C. be granted to TCCSB for several reasons. He stated that J.C. was well-adjusted to her foster home placement and did not have a strong bond or relationship with the Cadwalladers. Harvey testified that he found it significant that the court had not been able to grant anything other than supervised visitation at the agency to the Cadwalladers over the period of two years that J.C. was in TCCSB's temporary custody.

{¶11} Additionally, Harvey testified that he was concerned about the risk of domestic violence in the Cadwallader home, although he stated that there had been no arrests or convictions for domestic violence. Harvey testified that he was also troubled by an arrest of Mrs. Cadwallader involving possession of drug paraphernalia. Harvey had suspicions that the Cadwalladers may be participating in "deception" involving their drug screens, as they claimed to be taking certain prescription medications but then tested negative for these medications in their drug screens.

{¶12} Officer Richard Mattessich of the Weathersfield Township Police Department testified that on March 19, 2009, he encountered Mrs. Cadwallader and a

man sitting in a vehicle at a game reserve, which had a no trespassing sign. Upon asking the parties to exit the vehicle, Mattessich found a “crack pipe or suspected crack pipe” in the seat where Mrs. Cadwallader was sitting. Mattessich also testified that the man stated that he had paid Mrs. Cadwallader \$15 for sex. Mrs. Cadwallader was arrested for Possession of Drug Paraphernalia, Trespassing, and Obstructing Official Business.

{¶13} Officer Todd Garlow also testified regarding the March 19, 2009 arrest. He stated that Mrs. Cadwallader admitted to having been in the car in order to exchange money for sex. Mrs. Cadwallader ultimately pled guilty to Obstructing Official Business and Criminal Trespass.

{¶14} Hope Robison, Mrs. Cadwallader’s mother, testified that she found letters written from Mrs. Cadwallader to E.C., A.C., and J.C., stating that “she was going to end her life,” and that she was not a good mother. Robison also testified that Mrs. Cadwallader had previously been hospitalized for suicide attempts and psychological problems. The record indicates that Mrs. Cadwallader has suffered from depression and bipolar disorder and that Mr. Cadwallader has also had problems with depression. Robison stated that she did not believe the Cadwalladers were capable of making decisions that would positively impact J.C.’s well-being and stated that she was in support of granting custody of J.C. to TCCSB.

{¶15} A deposition was taken of TCCSB caseworker Ashley Anderson on January 11, 2010, and submitted to the court for review during the hearings. Anderson was the caseworker involved with the Cadwalladers for the year preceding the permanent custody hearings. In her deposition, Anderson testified that the concerns

outlined in the Cadwalladers' case plan were anger management issues, steady housing, mental health problems, and drug and alcohol problems. She testified that Mr. Cadwallader completed anger management treatment as required by the case plan and that the Cadwalladers had completed substance abuse treatment. They had also completed mental health counseling and parenting classes. She testified that the Cadwalladers had moved at least twice in the past year. She stated that their current residence had all of the basic necessities but believed that the one bedroom in the apartment may have been used as a storage area.

{¶16} Anderson also testified that the Cadwalladers were required by their case plan to perform random drug screens based on their prior history of drug use. Anderson stated that the Cadwalladers had not been compliant with requests for random drug screens. She explained that on various instances the Cadwalladers would not answer phone calls requesting drug screens or that the Cadwalladers would make excuses as to why they were not available to perform the screens. Anderson testified that TCCSB's case plan for the Cadwalladers considers refusal to take a drug screen as a positive test for drugs. Anderson stated that in the week prior to the deposition, the Cadwalladers avoided being tested for several days, and upon being tested, their tests showed a faint line of cocaine that did not rise to the level of a positive test. Anderson stated that this made her "suspicious as to why [she] wasn't able to get them last week" to perform the drug screen.

{¶17} Anderson additionally reported that "suspicious activity" occurred surrounding the drug screens. On one occasion, Mrs. Cadwallader had a "cap fall from her underpants" after providing a urine sample. On other occasions, the Cadwalladers

would state that they had been taking their prescription medications for mental health and medical conditions but these medications failed to show up in the drug screen, leading to concerns that the urine provided may have been substituted or falsified.

{¶18} Anderson also expressed concerns that domestic violence was occurring within the Cadwallader household, although she admitted that no charges had been filed against Mr. Cadwallader. Anderson testified that she had “witnessed several bruises” on Mrs. Cadwallader and that she had seen Mr. Cadwallader become very “agitated” with Mrs. Cadwallader. Anderson witnessed Mr. Cadwallader state, “Do you want to happen to you this time what happened to you last time? I’m going to think of something very good.” When Anderson asked Mrs. Cadwallader about potential violence, Mrs. Cadwallader acted anxious but denied that she had been abused. Anderson also testified that Mrs. Cadwallader had once gone to Someplace Safe, a battered women’s shelter.

{¶19} Anderson stated that although the Cadwalladers had complied with some of the requirements of the case plan, she does not believe that the Cadwalladers have “much insight” as to why J.C. has been removed from their care, have had limited positive behavior changes, and have not shown sufficient improvement. She believed they would be unable to maintain any progress that they had achieved.

{¶20} Patricia Currington, a caseworker for TCCSB who had replaced Anderson and had been working on the Cadwallader case for several weeks prior to the hearing, testified that she observed visitation between the Cadwalladers and J.C. on at least five occasions. Currington testified that she believed the Cadwalladers acted “inappropriately” when visiting with J.C. On one occasion, the Cadwalladers spent the

majority of their visit trying to coax J.C. into saying “I love you mommy.” On another occasion, the Cadwalladers showed J.C. a scar on Mrs. Cadwallader’s stomach, presumed by Currington to be a Caesarian scar, and asked J.C. to kiss the scar. Currington also testified that the visitation with the Cadwalladers is “very stressful for [J.C.]” and that J.C. does not say goodbye to the Cadwalladers when leaving visitation. Currington testified that J.C. is “spent” by the end of visitation. Currington additionally stated that the parents had been evicted from their last home and had just recently moved to a new home. She stated that she did not believe that the Cadwalladers have the insight and judgment to care for a child and recommended that permanent custody of J.C. be granted to TCCSB.

{¶21} Patricia Carfolo, a supervisor at TCCSB, testified that since Mrs. Cadwallader’s arrest for Possession of Drug Paraphernalia, Mrs. Cadwallader has also been charged with five counts of Theft. Carfolo also testified that the family J.C. was currently living with was a foster-to-adopt family and that J.C. was bonded with this family.

{¶22} Mrs. Cadwallader testified that she has been able to pay her bills with the money she and Mr. Cadwallader receive from SSI. She also testified that she often has trouble with her cell phone working and explained that she often did not receive Anderson’s messages that she needed to perform her drug screens because of these phone problems.

{¶23} Carolyn Robinson, a friend of the Cadwalladers, testified that the Cadwalladers want to have J.C. back and stated that she has not observed anything that should prevent them from having permanent custody of J.C. Carolyn’s husband,

William Robinson, also testified that the Cadwalladers are “decent, caring people” and that he has not observed any signs that they are using drugs or alcohol.

{¶24} Colleen Derryberry, another friend of the Cadwalladers and an alcohol and drug counselor, testified that she had not observed any signs of substance abuse in the Cadwalladers. She also testified that they have a desire to retain custody of J.C.

{¶25} Charles Davis, the Cadwalladers’ pastor, testified that the Cadwalladers are committed to turning their lives around and have done so over the past year.

{¶26} On February 23, 2010, a Magistrate’s Decision was issued granting TCCSB’s Motion, due to the court’s findings that the Cadwalladers had continued mental health and domestic violence problems, were unable to demonstrate proper parenting, and had been unable to demonstrate their ability to remain drug-free.

{¶27} On March 4, 2010, the Cadwalladers filed Objections to the Magistrate’s Decision.

{¶28} On May 27, 2010, the trial court adopted the Magistrate’s Decision and overruled the Cadwalladers’ Objections, granting TCCSB’s Motion and terminating the Cadwalladers’ parental rights.

{¶29} The Cadwalladers timely appeal and raise the following assignment of error:

{¶30} “The Magistrate and Judge’s decision to terminate Rhonda Cadwallader and Calvin Cadwallader’s parental rights to their daughter, [J.C.] is against the manifest weight of the evidence as prescribed by R.C. 2151.414(E).”

{¶31} “[I]t is well established that a parent’s right to raise a child is an essential and basic civil right.” *In re Phillips*, 11th Dist. No. 2005-A-0020, 2005-Ohio-3774, at

¶22, citing *In re Hayes* (1997), 79 Ohio St.3d 46, 48. It has often been remarked that “parents who are suitable persons have a ‘paramount’ right to the custody of their minor children” and that the “[p]ermanent termination of parental rights has been described as ‘the family law equivalent of the death penalty in a criminal case.’” *In re Johnston*, 11th Dist. No. 2008-A-0015, 2008-Ohio-3603, at ¶33, citing *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, at ¶10. “Based upon these principles, the Ohio Supreme Court has determined that a parent ‘must be afforded every procedural and substantive protection the law allows.’” *Phillips*, 2005-Ohio-3774, at ¶22, citing *Hayes*, 79 Ohio St.3d at 49.

{¶32} R.C. 2151.414(B)(1) is the applicable standard that a trial court must apply to determine the outcome of a motion for permanent custody. The statute provides:

{¶33} “(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

“(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 [2151.41.3] 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.

{¶34} “(b) The child is abandoned.

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

{¶36} “(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 [2151.41.3] of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.” R.C. 2151.414(B)(1)(a)-(d).

{¶37} “Assuming the juvenile court ascertains that one of the four circumstances listed in R.C. 2151.414(B)(1)(a) through (d) is present, then the court proceeds to an analysis of the child's best interest.” *In re T.B.*, 11th Dist. No. 2008-L-055, 2008-Ohio-4415, at ¶34. “In determining the best interest of a child ***, the court shall consider all relevant factors, including, but not limited to, *** [t]he 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; *** [t]he custodial history of the child ***; [and] [t]he 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.” R.C. 2151.414(D)(1)(a),(c), and (d).

{¶38} “When reviewing the juvenile court’s findings, this court applies the civil manifest-weight-of-the-evidence standard. *In re Lay* (1986), 25 Ohio St.3d 41, 42 (citation omitted). ‘Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.’ [*State v.*] *Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶24, quoting *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, at syllabus. ‘A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.’ *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81.” *In re T.F.*, 11th Dist. No. 2009-A-0039, 2010-Ohio-590, at ¶53.

{¶39} The Cadwalladers argue that several of the trial court’s findings were against the manifest weight of the evidence.

{¶40} First, the Cadwalladers argue that the trial court committed error in finding that they had a drug and/or alcohol abuse problem and argue that the drug screens done by the Cadwalladers were acceptable.

{¶41} The evidence shows that both Cadwalladers had drug screen results that were positive for cocaine throughout the end of 2007. Additionally, in the days preceding the hearing, after avoiding testing for several days, both of the Cadwalladers showed faint traces of cocaine in their system, although it did not rise to the level of being a positive test.

{¶42} Several witnesses testified as to suspicious circumstances surrounding the Cadwalladers’ drug screens throughout 2008 and 2009, the Cadwalladers’ lack of cooperation in providing urine samples, and questioned whether the Cadwalladers were

adulterating their urine samples in order to create the appearance that they were not using drugs. The record indicates that there have been suspicious urine samples submitted throughout 2007 and 2008, including urine that was out of the proper temperature range, indicating adulteration of the sample. Other suspicious activity occurred, including when Anderson witnessed a cap fall out of Mrs. Cadwallader's underpants after testing, providing suspicion that she may have altered her urine or provided a false urine sample. Additionally, the Cadwalladers stated that they had been taking various prescription medications, but these medications failed to show up in many drug screens.

{¶43} Throughout both 2008 and 2009, the Cadwalladers would continuously either refuse to provide urine for testing or not be available for testing upon request. The Cadwalladers would not answer their phone or return messages. They also provided various excuses for failing to make themselves available for testing. This would often occur over a several day period before the Cadwalladers would finally provide a urine sample. This activity was considered a refusal by TCCSB and therefore was viewed as a positive test under the language of the case plan. See *In re Davis*, 10th Dist. Nos. 04AP-184 and 04AP-210, 2004 Ohio App. LEXIS 3670, at *20 (a parent's failure to take tests and demonstrate that they have stopped using illegal drugs is competent and credible evidence that can be used to satisfy the clear and convincing standard.)

{¶44} When taking all of the foregoing into consideration, there is ample evidence to support the trial court's finding that the Cadwalladers did not comply with the case plan and were unable to prove drug and alcohol abstinence.

{¶45} The Cadwalladers also argue that the trial court erred in finding that they failed to maintain stable housing.

{¶46} Anderson reported that the Cadwalladers had lived at two different locations in the year she had been working on the case and at least one location prior to that. She also had concerns that the Cadwalladers were currently living in a one bedroom apartment and that the single bedroom was being used for storage, leaving no room for a child. Anderson explained that TCCSB had not been able to further inspect home conditions because the Cadwalladers would not arrange a time to visit the home.

{¶47} Currington testified that between the first and second hearing date on this matter, the Cadwalladers were evicted and had to move to another apartment. Currington indicated that Mrs. Cadwallader would not allow her to inspect this home to determine whether it was appropriate because she had boxes everywhere and was afraid TCCSB would find the home unsafe.

{¶48} The evidence in the record supports the court's finding that there are concerns with the Cadwalladers having a stable housing situation. While this factor alone may not justify denying the Cadwalladers permanent custody of J.C., it must be considered with the other factors described by the trial court.

{¶49} The Cadwalladers next argue that the court erred in finding that they failed to demonstrate good parenting.

{¶50} The record shows that the Cadwalladers did comply with the case plan by completing parenting classes. Moreover, the Cadwalladers have spent little time with J.C. and have never been granted unsupervised visits with her. Currington testified as to several specific instances of questionable parenting, including "badgering" J.C. during

visitation in an attempt to get J.C. to say “I love mommy” and to get her to kiss a scar on Mrs. Cadwallader’s stomach. Robison also explained that she found letters from Mrs. Cadwallader to her children discussing how she was going to commit suicide, which Robison believed was inappropriate to discuss with children.

{¶51} Additionally, several witnesses from TCCSB, as well as Robison, testified as to the Cadwalladers’ inability to parent appropriately, expressed concern that J.C. could not be cared for adequately by the Cadwalladers, and testified that J.C. did not have a strong bond or relationship with the Cadwalladers. GAL Harvey testified that although the visitation he observed between the Cadwalladers and J.C. was “without incident,” he further noted that J.C. “had not formed any sort of bond or traditional parent/child relationship” with them. According to Harvey, J.C. interacted with the Cadwalladers in the same way she would interact with other individuals she came in contact with, such as caseworkers or other TCCSB employees. Again, the evidence presented provided the trial court with justification for findings that the Cadwalladers failed to demonstrate adequate parenting abilities and were not bonded with J.C.

{¶52} The Cadwalladers further argue that it was an error to find that domestic violence was a factor in awarding permanent custody to TCCSB.

{¶53} Anderson testified that she had noticed several “red flags” for domestic violence in the Cadwalladers’ relationship. Mrs. Cadwallader had unexplained injuries, acted anxious when questioned about domestic violence, and had gone to Someplace Safe, a shelter for those experiencing domestic violence. Additionally, Anderson had witnessed Mr. Cadwallader becoming agitated with Mrs. Cadwallader and making statements that could be construed as threats.

{¶54} While it is true that there have been no domestic violence convictions, the court had adequate evidence before it to consider this issue. Although the evidence of domestic violence itself may not have been sufficient to grant permanent custody of J.C. to TCCSB, this evidence was just one of many factors considered by the trial court.

{¶55} The Cadwalladers also argue that their mental health issues were not significant enough to deny them permanent custody of their daughter.

{¶56} The Cadwalladers have a history of depression and Mrs. Cadwallader has bipolar disorder. Both are on medications for their mental health problems. However, the record shows that at times the Cadwalladers may not be taking their medication, as the medication did not show up on their drug screens. At other times, there have been questions about whether Mrs. Cadwallader has been abusing her medication and whether the medication has hindered her ability to effectively parent. Currington stated that Mrs. Cadwallader seemed groggy and had changes in her speech and mood. Additionally, on several occasions, Mrs. Cadwallader's mood would change from high to low within a matter of minutes. Mrs. Cadwallader has threatened to commit suicide several times throughout the past few years.

{¶57} Additionally, Currington expressed concern that the Cadwalladers had not provided their mental health provider's treatment records, as required by the case plan. This made it difficult for TCCSB to monitor the Cadwalladers' progress and determine whether their mental health issues were being adequately treated. Therefore, there is evidence supporting the trial court's finding that the Cadwalladers have continuing mental health issues.

{¶58} The Cadwalladers assert that the trial court erred in not affirming the original recommendation of the GAL, Harvey, which recommended that TCCSB be denied permanent custody of J.C.

{¶59} On August 14, 2009, the GAL report filed with the court indicated that the Cadwalladers should retain permanent custody. However, Harvey supplemented this report prior to the hearings. Harvey testified at the hearing that he had witnessed additional visitation which caused him to change his recommendation. The Cadwalladers failed to provide a reason why the court had to adopt the recommendation of Harvey's initial report. The Cadwalladers' attorney was given sufficient opportunity during the hearing to cross-examine Harvey and, therefore, his recommendations as to J.C.'s best interest were appropriate for the court to consider.

{¶60} The Cadwalladers also argue that there is not clear and convincing evidence under R.C. 2151.414(E), especially because only subsections 1 and 2 of R.C. 2151.414(E) apply to the Cadwalladers.

{¶61} "Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re T.B.*, 2008-Ohio-4415, at ¶35 (citation omitted). "The standard of review for weight of the evidence issues, even where the burden of proof is 'clear and convincing,' retains its focus upon the existence of some competent, credible evidence. In other words, when reviewing awards of permanent custody to public children services agencies, judgments supported by some competent, credible evidence must be affirmed. If the record shows some competent, credible evidence supporting the trial court's grant of permanent custody to the county,

*** we must affirm that court’s decision, regardless of the weight we might have chosen to put on the evidence.” *In re Kangas*, 11th Dist. No. 2006-A-0084, 2007-Ohio-1921, at ¶85 (citations omitted). “Every reasonable presumption must be made in favor of the judgment and the findings of fact of the juvenile court.” *Id.* at ¶86, citing *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19.

{¶62} “In determining *** whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence.” R.C. 2151.414(E). “If the court determines, by clear and convincing evidence, *** that one or more of the following exist as to each of the child’s parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent: (1) Following the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home.” R.C. 2151.414(E)(1).

{¶63} “[T]he existence of a single factor will support a finding that a child cannot be placed with either parent within a reasonable time.” *In re Johnston*, 2008-Ohio-3603, at ¶40, citing *In re J.C.*, 4th Dist. No. 07CA834, 2007-Ohio-3783, at ¶23; *In re Jason S.*, 6th Dist. No. L-05-1264, 2006-Ohio-726, at ¶30 (“because one of the enumerated conditions existed, it was unnecessary for the juvenile court to address any of the other 15 conditions listed in R.C. 2151.414(E)”).

{¶64} Here, the trial court found that R.C. 2151.414(E)(1) applied, that the parents have failed “continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.” Much of the evidence in the record shows that the Cadwalladers have continued to have the same problems with parenting and drug use as they have had throughout J.C.’s life.

{¶65} The Cadwalladers argue that because they completed their case plan, it was inappropriate to grant permanent custody to TCCSB.

{¶66} Where there is compliance with some aspects of the case plan but the problems which led to the initial removal still exist, a court may find that a child cannot be placed with the parent within a reasonable time. *In re S.M.*, 11th Dist. No. 2008-G-2858, 2009-Ohio-91, at ¶26.

{¶67} It is true that the Cadwalladers completed several elements of their case plan, including attending parenting classes, anger management classes, and drug and mental health counseling. However, many of TCCSB’s witnesses testified that while the Cadwalladers completed these logistical requirements, they did not develop insight into their problems in parenting or managing their drug problems. Although the Cadwalladers have attended counseling programs as required by the case plan, they have not resolved the concerns that TCCSB has had with their behavior, as evidenced by the discussion of their mental health problems, parenting problems, drug use issues, and suspected domestic violence concerns above.

{¶68} Additionally, there are several important elements of the case plan that the Cadwalladers did not comply with. The case plan, as amended in 2008, includes requirements that the Cadwalladers be available to the agency by phone quickly and

randomly, that the drug screens show the Cadwalladers are taking the appropriate prescribed medication, that the Cadwalladers provide urine when requested and do not alter such urine, and that the Cadwalladers show they have learned appropriate skills from the required counseling and “can then apply this information to real life situations.”

{¶69} The Cadwalladers have not complied with these elements of the case plan. They continue to avoid contact with the agency and often do not provide urine for drug screens when requested. The Cadwalladers’ drug screens do not show consistent use of medications for mental health problems. Additionally, many witnesses testified that the Cadwalladers have not learned how to appropriately parent and are unable to apply the lessons they have learned in counseling to real life situations.

{¶70} When the evidence presented at trial is viewed together, there is clear and convincing evidence for the trial court to have determined that granting permanent custody of J.C. to TCCSB was appropriate and in her best interest. Although the Cadwalladers made attempts to comply with some of the logistical requirements of the case plan, they continually were unable to improve their behaviors and abilities to parent appropriately. Additionally, the Cadwalladers repeatedly failed to comply with various requirements of the case plan and were uncooperative with drug screening. The trial court did not err in determining that the parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home, such that J.C. cannot be returned to the Cadwalladers’ custody.

{¶71} For the foregoing reasons, the judgment of the Trumbull County Family Court, Juvenile Division, awarding permanent custody of the Cadwalladers’ child, J.C., to TCCSB, is affirmed. Costs to be taxed against appellants.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

{¶72} As the majority acknowledges, “The permanent termination of parental rights has been described as the family law equivalent of the death penalty in a criminal case.” *Phillips*, supra, at ¶22. As it further acknowledges, the state, when seeking to terminate permanently parental rights, is required to prove its case by “clear and convincing evidence” – evidence of sufficient quality “to produce in the mind of the trier of fact a *firm* belief or *conviction* as to the facts sought to be established.” *In re T.B.*, supra, at ¶35. (Emphasis added.) A review of the evidence in this case indicates to me the state failed to introduce evidence meeting this high threshold. The GAL admitted that his observation of the Cadwalladers with J.L.C. revealed normal, loving interaction between them. Ms. Anderson, the principal caseworker, testified to the same in her deposition. While the difficulties and failures recounted by the majority regarding the Cadwalladers’ drug screens are troubling, the record indicates improvement by the Cadwalladers in meeting this goal of their case plan. Ms. Currington, their new caseworker, testified that drug screens administered immediately prior to the February 2010 hearings indicated both of the Cadwalladers were limiting themselves to their prescribed medications. Ms. Anderson further testified that, during her tenure as the

Cadwalladers' caseworker, Mr. Cadwallader did not actually test positive for drugs of abuse; and, that Mrs. Cadwallader only did so once or twice. The Cadwalladers completed the drug and alcohol assessments mandated by the case plan. Mrs. Derryberry, a family friend, and a drug and alcohol counselor by profession, testified she never saw indications of substance abuse by the Cadwalladers. Another family friend, William Robinson, testified to the same effect. Mr. Robinson further testified to the excellent relationship between his own minor son and the Cadwalladers, and to the willingness of himself and his wife to take custody of J.L.C. Mr. Cadwallader had completed his anger management class, as mandated by the case plan; no actual evidence of domestic violence was produced.

{¶73} This is simply a selection of the many facts contained in the record indicating the state failed to prove, by clear and convincing evidence, that the Cadwalladers should be subjected to the family law equivalent of the death penalty. On the basis of the record before this court, I would reverse and remand.

{¶74} I respectfully dissent.