[Cite as *In re S.K.*, 2009-Ohio-3954.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

IN THE MATTER OF: S.K. :

: C.A. CASE NO. 2009 CA 26

: T.C. NO. 2007-1930

: (Civil appeal from Common Pleas Court, Juvenile Division)

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O P I N I O N

Rendered on the 7th day of August, 2009.

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ROGER A. WARD, Atty. Reg. No. 0065394, 50 E. Columbia Street, P. O. Box 1608, Springfield, Ohio 45501
Attorney for Plaintiff-Appellee

JON PAUL RION, Atty. Reg. No. 0067020, P. O. Box 10126, 130 W. Second Street, Suite 2150, Dayton, Ohio 45402
Attorney for Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of H.K., filed March 13, 2009. H.K. appeals from the judgment of the Clark County Court of Common Pleas, Domestic Relations Division, Juvenile Section, granting permanent custody of his daughter, S.K., to the Clark County Department of Job and Family Services ("Agency"). S.K. was born on September 11, 2007, and her mother is

H.K.'s former girlfriend, E.T.

{¶ 2} On October 15, 2007, the Agency filed a Complaint for Emergency Shelter Care, seeking guardianship of S.K. According to the Complaint, United States Marshals mistakenly went to S.K.'s home to serve a warrant, and while there they observed deplorable conditions. Inside the home were 17 cats and two dogs, and there were feces, urine and vomit all over the floors. The odor within the home was overwhelming, and the authorities observed fleas and gnats everywhere. Springfield Police officers responded, along with Agency workers, and H.K. and E.T. were arrested on charges of child endangering. S.K. was removed from the home.

{¶ 3} Agency workers observed that S.K. had diarrhea and a diaper rash so severe that she was bleeding in one area, and she was screaming in pain. S.K. was subsequently admitted to the hospital, where she was diagnosed with dehydration, thrush, acid reflux, and a urinary tract infection. She was subsequently diagnosed with hypotoma, which is a lack of muscle tone. According to the Complaint, S.K. was previously admitted to the hospital for acid reflux from October 5 - 9, 2007, and hospital staff at that time advised the Agency of their concerns regarding the hygiene and level of functioning of H.K. and E.T. A social worker met the family at the hospital on October 9, 2007, but when she attempted a follow-up visit after S.K.'s release, H.K. and E.T. denied her access to their home.

{¶ 4} Following a hearing, the juvenile court issued a Temporary Shelter Care Order on October 15, 2007, and on December 5, 2007, the court issued a Judgment Entry and Temporary Custody Order with the agreement of H.K. and E.T.

A guardian ad litem was appointed for S.K.

{¶ 5} The Agency developed a case plan with the aim of reuniting S.K. with her parents. Pursuant to the plan, H.K. was to undergo a psychological evaluation, and he was to follow any recommendations set forth therein. H.K. was referred to Family Life Education for a class on cooking and cleaning, and the plan provided that he would use his new skills to provide a clean and safe living environment for S.K.. The case plan provided for H.K. to attend scheduled visitations with S.K., and H.K. was also to attend all of the child's doctor and physical therapy appointments.

{¶ 6} On October 17, 2008, the Agency filed a Complaint and Motion to Modify Temporary Custody to Permanent Custody, after concluding that H.K. and E.T. were unable to meet S.K's needs.

{¶ 7} A hearing was held on February 6, 2009. E.T., who had left town in August, 2008, did not attend. Dr. Daniel Hrinko, an expert in the field of clinical forensic psychology, testified regarding the psychological evaluation he performed on H.K. According to Hrinko, H.K. failed to cooperate with the assessment process. When Hrinko attempted to administer the Minnesota Multiphasic Personality Inventory, in which H.K. simply had to indicate true or false answers to questions, H.K. "randomly answered items without regard to location on the page or matching item numbers with response numbers." When Hrinko stopped H.K., instructed him again on the test and reminded him of its importance as part of his case plan, H.K. began the test again but left without completing it. To complete the evaluation, Hrinko "was forced to rely on collateral information, my own

observations and professional judgment."

{¶ 8} Hrinko testified that H.K. receives Social Security benefits for mental health problems, and he determined H.K. "to be functioning in the mild range of mental retardation." H.K. reported to Hrinko that the Social Security Administration found him incapable of managing his financial affairs, requiring his mother to be his payee for his Social Security Disability benefits.

{¶ 9} Hrinko testified that H.K. is "a person with clear limitations in his educational achievement and accomplishment, as well as cognitive abilities." Hrinko stated that H.K. often exaggerates his difficulties to his own benefit. According to Hrinko, when H.K. was confronted with problems, he "consistently rationalized his actions, shifted blamed [sic] to others, or minimized the severity of the problem or his responsibility in the role. As a result, he portrayed himself as a victim consistently and felt that he had no difficulties that required changing or addressing." It was significant to Hrinko that H.K. "also has failed, at the time of my assessment, to benefit from attempts to assist him, either through not attending or dropping out of or not making use of opportunities for support, such as mental health counseling and other benefits." Hrinko further testified that H.K. has a volatile temper, and he reported that H.K. was arrested in 1999 for felonious assault, which was reduced to aggravated assault, resulting in a year in prison.

{¶ 10} The record reveals H.K. was married in 1988 and has a son, born in 1990, and a daughter born in 1992. H.K. and his wife divorced in 1992. Hrinko's report notes that H.K. has had no visitation with his older children in years. H.K. reported that his ex-wife married again in 2000 and that her new husband refused

to allow H.K. to see his son and daughter. H.K. stated that his children are in foster care because of the conduct of his ex-wife and her husband. H.K. told Hrinko that he "paid the price" for his ex-wife's remarriage, and he indicated that his older children were "brainwashed" by his ex-wife and her husband into lying about him. H.K.'s daughter had reported that H.K. sexually abused her, and Hrinko testified that he assessed the daughter at one time. Hrinko testified that the older daughter described a "high level of animal feces and animal urine" in their home, and she described "having to go to school in pissy clothes, smelling of urine." According to Hrinko, there was inadequate food in the home, and "these were situations she described to me about her childhood where [H.K.] was directly involved and responsible for the conditions."

{¶ 11} Hrinko's report describes H.K. as angry and frustrated, and it notes that H.K. "expressed a strong belief that children's Services had made up their mind to prevent him from having access to his children." According to Hrinko, "As of the time that I saw Mr. [H.K.], I would feel uncomfortable having any child in his care."

{¶ 12} Kathryn Boyle, a developmental specialist who had been working with S.K. for almost a year and a half at the time of trial, testified about S.K.'s developmental delays. According to Boyle, S.K. was evaluated in the areas of cognitive development, motor development, language development, self help development and social development, and she was "delayed in all areas."

{¶ 13} Boyle testified that H.K. and E.T. had visitation with S.K. at Gibault Visitation Center, and she met with them several times to teach them how to work with S.K. in order to increase her developmental skills. According to Boyle,

regarding H.K.'s interactions with S.K., her "strongest impression was that he didn't understand, or that he was not physically able to do the things that I was asking him to do. He didn't offer to do the things that I asked him to do." Boyle testified, "People who have low muscle tone will always have issues to deal with. And you always need to have someone caring for her who will keep medical appointments, who will look for interventions, * * * on a regular consistent basis, work with a child so that they can maintain their skills." Boyle maintained that S.K. would need someone to work with her on a daily basis, and she did not believe that H.K. would be a fit and capable custodian for S.K.

{¶ 14} Jennifer Ricketts, a visitation coordinator at Gibault Visitation, testified that she supervised H.K.'s and E.T.'s visitations with S.K. and prepared summaries of the visits. According to Ricketts, H.K.'s visits were "at a level one," which means that he was never allowed to be alone with S.K. Rickets testified that, while H.K. would perform the recommended exercises with S.K. if prompted, he would not do them without prompting. Ricketts also noted that a total of 61 visits were scheduled for H.K., and that he cancelled 15 of them.

{¶ 15} Officer Anna Fredendhall of the Springfield Police Department testified that she photographed the conditions of S.K's home at the time of her removal. According to Fredendhall, "there wasn't really a place for the baby to sleep. * * * the crib was full of clothes. * * * there [were] old bottles sitting out." Fredendhall noted there were "a lot of cats," the litter boxes were dirty, and there were feces all over the floor.

{¶ 16} T.K., S.K.'s foster mother, testified regarding S.K.'s progress, stating

that “she is pretty much on target physically and developmentally.” She stated that S.K. still had caregivers coming to her home to help her with her exercises, and “[t]hey feel that it would be a lifelong [sic] to help make her core stronger.” When asked if it was necessary to make various medical appointments for S.K., T.K. responded, “Many, many.” She stated that S.K.’s parents were invited to all of her appointments at every team meeting, but that “[f]or the appointments down at Children’s, they made approximately half. For the physical therapy, which was done locally, they came less than half.”

{¶ 17} Brenna Theiss, a social service worker with the Agency testified that she received S.K’s case in June, 2008, after a previous social worker left the Agency. Theiss stated that the Agency had substantiated claims of sexual abuse and neglect against H.K. involving his other children. She also noted that physical abuse of those children had been “indicated.” According to Theiss, “[H.K.] refused to cooperate with the investigation; and therefore, no charges were filed.” She stated that H.K.’s older daughter is in a permanent planned living arrangement, as was his son, until he turned 18 years of age.

{¶ 18} Theiss described H.K.’s attendance at physical therapy sessions for S.K. as “sporadic, at best.” When asked about H.K.’s ability to care for S.K., Theiss responded that she has “numerous concerns about his ability to care for [her]. * * * My concern is that his understanding of child development is very limited. And especially her being a special needs child who has needed such rigorous care in the foster home and had so many appointments, evaluations, assessments, that he would not be able to meet those needs.”

{¶ 19} Theiss further testified that she arranged transportation for H.K. to attend S.K.'s appointments and wrote down the dates for him, and "on multiple occasions I became frustrated when he would not attend [appointments]. * * * And then when addressed at the team meeting, he said he would do better the next month. And the next month it would be the exact same situation, missed appointments, [transportation] provided, knowledge of the bus system." According to Theiss, "we have provided the family everything we could have" to promote reunification.

{¶ 20} At the time of the trial, H.K. was residing at Cole Manor, an apartment complex that does not allow children. Theiss visited the apartment on two occasions, and while it was clean, she "expressed a great deal of concern because there was an unclosed cabinet that held numerous knives."

{¶ 21} Theiss testified that S.K. has made tremendous progress in foster care, and that she has bonded with her foster parents. According to Theiss, S.K. is "active and attempting things that she had not [before]." When asked what was in S.K.'s best interest, Theiss maintained, S.K. "needs to be in a stable and loving home that can meet all of her needs, that will continue regularly with any type of physical therapy or developmental assessments."

{¶ 22} At the conclusion of the Agency's case, H.K. indicated to the court that he wanted to voluntarily surrender custody of S.K. After a lengthy discussion with the court, H.K. changed his mind and the hearing continued.

{¶ 23} H.K.'s testimony reveals he and his new girlfriend of six months, S.N., had been living in Cole Manor for five months and were in the process of buying a

home. He stated they planned to close on the home on the upcoming Monday. H.K. asserted that his mother was prepared to take him and S. K. into her home if he received custody of S.K. at the close of the hearing on Friday.

{¶ 24} When asked why he at one time had so many cats in his home, H.K. responded, "Well, you know, it's one of them things, oh, let's keep this one, that one's pretty, let's keep that one; not really stopping to think we was creating a future problem."

{¶ 25} When asked about his relationship with E.T., H.K. stated that they had been together three years. H.K. stated he "used to live at 901 [G.] and she moved in up there with me. And we lived at various places around Springfield, you know, always let her pick the houses out and I just paid the rent." Two of E.T.'s male friends also lived with H.K. and E.T. for a time at their last residence together, and H.K. testified, "I didn't want them gentlemen there because they was causing problems, wasn't helping out with their part, you know, like help keep the house clean like they was supposed to. They was creating more mess. And I knew in the end it was going to back flash on me, but I couldn't tell her anything."

{¶ 26} When asked about the conditions of the house as shown in the photographs, H.K. replied that the mess occurred while he and E.T. were away from the house and in the hospital with S.K., while she was being treated for acid reflux. H.K. testified that when he was home he usually cleaned the four litter boxes three times a day. Regarding the baby bottles sitting out, H.K. stated, "we set the bottles out, and now I can tell you we was negligent on rinsing them out right away. That's why they was sitting there, and it was wrong."

{¶ 27} The following exchange occurred regarding the feeding of S.K.:

{¶ 28} "Q. * * * you testified that * * * [E.T.] was attempting to * * * breast-feed [S.K.], right?

{¶ 29} * *

{¶ 30} "Q. And that she was attempting to supplement * * * the breast-feeding with formula, right?

{¶ 31} "A. Yes.

{¶ 32} "Q. And your testimony, I believe, was that you told [E.T.] not to do that because you didn't want to overfeed the baby?

{¶ 33} "A. Well * * * when the baby's done nursing, it would be wrong of me to run over with a bottle and when it's not hungry and say eat, you know. At first she did that, but she corrected herself when she realized the kid wasn't hungry no more.

{¶ 34} "Q. Now you're aware * * * that when [S.K.] was removed from your custody she was malnourished?

{¶ 35} "A. That's what I couldn't figure out, * * * I was scratching my head on that one too.

{¶ 36} "Q. * * * So would it be fair to say that you didn't have a very good idea of what the child's needs * * * were regarding her feeding?

{¶ 37} "A. I've asked her if she'd feed her, you know. I didn't have the equipment to feed her, or I would have, you know."

{¶ 38} H.K. acknowledged that he and E.T. were required to take cleaning classes as part of their case plan, "[a]nd then we had to turn around and make sure

the environment stayed clean. * * * And the house did start staying clean, but the odor was still there after all that mess; it was still there pretty bad, I admit. Then me and [E.T.] was playing the blaming the other guy game. But now I see that it wasn't all one person's fault; we let it happen." H.K. stated that he would never allow another mess to occur, and that he would never have any more pets.

{¶ 39} H.K. testified that Hrinko recommended that he obtain regular mental health counseling after his evaluation "to deal with some issues he thought was there," and H.K.'s testimony reveals he only made minimal efforts to do so. H.K. initially met with Aaron Pendergraft, "[b]ut when I found out [E.T.] was going to go there I backed out so she wouldn't think that I was conveniently ending up where she was." H.K. claimed he called "Mental Health" and was put on a waiting list. In August of 2008, H.K. then resumed counseling with Pendergraft after E.T. left town.

{¶ 40} H.K. testified that he has not seen his older children in six years, and when asked if his daughter was in Agency custody because of substantiated allegations of sexual abuse, he replied, "That's what they said, but I never done nothing to my daughter."

{¶ 41} Regarding the charges of child endangering brought as a result of S.K.'s removal from the home, H.K. testified that he and E.T. served three months of pretrial probation and the charges were dismissed.

{¶ 42} When asked about missing S.K.'s doctor's and physical therapy appointments, H.K. responded, "That's when me and [E.T.] was having our problems and I was overwhelmed with how to, you know, some of that was during the time we was having problems." When questioned further, H.K. replied, "Some

of them just plain forgetting, or having to, I guess as the saying, we're having too much on my plate, you know. And but I have attended a lot of them * * * I admit my daughter's needs is first. I know I have been forgetting, you know."

{¶ 43} H.K. admitted that he served a year in prison for felonious assault, and that he previously had been prescribed Effexor for anger problems.

{¶ 44} In response to questions from the trial court, H.K. testified that he "could" work, and that he has worked in the past. Nothing in the record suggests, however, that he has sought employment. When asked what he does during the day, H.K. responded, "Well, plan on getting [S.K.] home and making her a good life. I've been doing that all the time." When the trial court asked H.K. why he failed to attend S.K's appointments, he again stated that he "forgets."

{¶ 45} S.N., H.K.'s current girlfriend, testified that she lives with H.K. in Cole Manor, and that they are purchasing a home together. She stated that she witnessed H.K.'s parenting skills once when she attended a doctor's appointment with him. She further stated that she is willing to provide support to H.K. in the care of his daughter.

{¶ 46} Aaron Pendergraft, a licensed professional counselor at Catholic Charities, testified for H.K. According to Pendergraft, he began working with H.K. and E.T. together in March of 2008, but after a few sessions, H.K. stopped attending. Pendergraft began seeing H.K. for individual counseling in August of 2008. He stated that he knew that H.K. received Social Security benefits, but he stated that he did not know the reason. When asked if H.K.'s mental health problems were debilitating, Pendergraft responded in part, "[H.K.], you know, [H.K.]

takes - - takes part in daily activities, just like the rest of us do. He manages his own money, from what I gather. And [H.K.] does things, you know, a lot like you and I do. * * *" Pendergraft stated that he was unaware that H.K. was inconsistent in attending S.K's appointments. Notably, Pendergraft acknowledged that H.K. at the time could not meet the needs of his child by himself.

{¶ 47} In determining that S.K. should not be returned to H.K., the juvenile court noted that the facts and circumstances of H.K.'s life caused the court "great concern." The court found that the record establishes that H.K. had previously been deemed by the court as incapable or unwilling to provide a safe and appropriate home for his older children. The court noted that H.K. has had no contact with his older children while they were in a planned living arrangement, and the Agency had substantiated allegations of neglect and sexual abuse.

{¶ 48} The court noted that H.K.'s case plan required him to obtain a psychological evaluation, follow any recommendations, complete a family life class, obtain safe and appropriate housing and attend S.K's appointments. The court found that H.K. did not substantially complete the case plan. The court noted that Hrinko's evaluation "convinces the Court that the father has many mental and physical handicaps," noting the repeated indications of H.K.'s poor judgment, such as choosing to live in deplorable conditions. According to the court, "[s]tating he is disabled both physically and mentally is a means of avoiding responsibility in many situations. He often exaggerates his difficulties when it is beneficial to him. * * * He is a man in his forties and yet indicates that he must rely upon others to assist him in caring for the dollars that he receives each month. His mother is currently his

payee due to his inability to manage that small portion of his own affairs."

{¶ 49} Most significant to the court was H.K.'s "history of failing to respond to attempts at intervention in his life. * * * In many cases there are indications that the father has failed to make use of those resources to his benefit.

{¶ 50} " * * * His long-standing, well established pattern of painting himself as a victim interferes with his ability to benefit from the honest feed back and opportunities to make changes available in counseling. As a result, there are no indications to suggest that the father will make any significant changes in the way he manages his own behavior or relationships."

{¶ 51} The court further noted that H.K. failed to obtain suitable housing, noting Theiss' observation of the knives, and the fact that the complex where H.K. currently lived does not allow children. It was also significant to the court that H.K. missed multiple appointments with S.K., and that Pendergraft concluded that H.K. was unable to meet S.K.'s needs.

{¶ 52} The court noted that the guardian ad litem recommended that the motion for permanent custody be granted, and that the Agency made reasonable efforts at reunification.

{¶ 53} The trial court's order provides, "The child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent. * * *

{¶ 54} "The child should not be returned to the parents for the following reasons:

{¶ 55} "A. Following removal of the child outside the home of the parents,

and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents, they have failed to remedy the problems that caused the child to be placed outside the home.

{¶ 56} "B. The mother and father have abandoned the child.

{¶ 57} "C. The parents have demonstrated a lack of commitment toward the child by failing to regularly support, visit or communicate with the child when able to do so."

{¶ 58} Finally, the court enumerated its reasons for its conclusion that it was in S.K's best interest to terminate H.K.'s parental rights, including the reasonable probability that S.K. can be adopted, that S.K has no regular and meaningful contact with her biological family, that her parents cannot provide a safe home for her, that neither parent substantially remedied the conditions resulting in her removal, there are no known relatives on either side of the family that can care for her, the wishes of the child as expressed by the G.A.L. for a loving and secure home, and the lack of a safe, loving, appropriate relationship between the S.K. and her parents.

{¶ 59} H.K. asserts one assignment of error as follows:

{¶ 60} "THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION WHEN IT ORDERED THAT PERMANENT CUSTODY SHOULD BE GRANTED TO THE CCDJFS."

{¶ 61} "The United States Supreme Court has recognized that parents' interest in the care, custody, and control of their children 'is perhaps the oldest of the fundamental liberty interests recognized' by the Court. *Troxell v. Granville*

(2000), 520 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49." *In re M.S. & D.S.*, Clark App. No. 2008 CA 70, 2009-Ohio-3123, ¶15. "In a proceeding for the termination of parental rights, all of the court's findings must be supported by clear and convincing evidence. R.C. 2151.414(E); *In re J.R.*, Montgomery App. No. 21749, 2007-Ohio-186, at ¶ 9. However, the court's decision to terminate parental rights will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established. *In re Forrest S.* (1995), 102 Ohio App.2d 338, 345, * * * ; *Cross v. Ledford* (1954), 161 Ohio St. 469, * * * paragraph three of the syllabus." *In re K.S. & K.S.*, Clark App. No. 2008 CA 77, 2009-Ohio-533, ¶ 16.

{¶ 62} R.C. 2151.414(B) sets forth the circumstances under which a court may grant permanent custody of a child to a children services agency. Pursuant to R.C. 2151.414(B)(1)(a), the court may grant permanent custody of a child to the agency if the court determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the children services agency, and "The child is not abandoned or orphaned, has not been in the temporary custody of one or more public services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period, * * * and the child cannot be placed with either of the child's parent's within a reasonable time or should not be placed with the child's parents."

{¶ 63} In determining whether a child can be placed with either parent within a reasonable time, a trial court must comply with R.C. 2151.414(E), which provides

in relevant part:

{¶ 64} "In determining at a hearing * * * 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. If the court determines, by clear and convincing evidence, at a hearing * * * 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:

{¶ 65} "(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. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

{¶ 66} * *

{¶ 67} "(4) The parent had demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

{¶ 68} * *

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

{¶ 70} "R.C. 2151.414(D) directs the trial court to consider all relevant factors when determining the best interest of the child, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, relatives, foster parents and any other person who may significantly affect the child; (2) the wishes of the child; (3) the custodial history of child; (4) the child's need for a legally secure 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 R.C. 2151.414(E)(7) through (11) are applicable. The factors in R.C. 2151.414(E)(7) through (11) include conviction of various crimes like homicide, assault and child endangerment, and withholding food or medical treatment from a child." *In re S.K. & S.K.*, ¶ 21. R.C. 2151.414(E)(11) specifically provides, "The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code * * * ."

{¶ 71} Upon thorough review of all of the record, we conclude that the Agency presented clear and convincing evidence that granting permanent custody to the Agency was in S.K.'s best interest, and that S.K. could not be returned to H.K. within a reasonable period of time. Regarding the trial court's determination that H.K. failed to remedy the problems that resulted in S.K.'s removal, namely the deplorable conditions of his home and S.K.'s medical problems, H.K. argues that he complied with his case plan, that his home was clean and free of pets, and that S.K. is doing well. As noted by the trial court, however, the apartment where H.K.

was living at the time of the hearing did not allow children. Further, the record reveals that Theiss visited the apartment and was appropriately concerned about the presence of knives in an open cabinet. While H.K. and S.N. indicated that they intended to purchase and move into a house together, at the time of the hearing they had not done so, and there was no evidence before the court suggesting that H.K. could maintain a suitable home.

{¶ 72} The record further establishes H.K. failed to accept responsibility for the condition of his home in the first instance but rather blamed his previous tenants and E.T. We further conclude that H.K.'s testimony that he lived in "various" homes with E.T. in the course of their short relationship suggests a transient lifestyle pattern as opposed to the type of stability that S.K. needs.

{¶ 73} H.K.'s inability to care for S.K., so that she maintains her healthy progress, is also evident from the record before us. Boyle's "strongest impression" was that H.K. did not understand S.K.'s needs and was accordingly not able to help S.K. increase her developmental skills. Boyle's testimony indicates that H.K. did not try to work with his daughter on his own initiative, but that he would only perform the recommended exercises with S.K. if prompted by Boyle. Theiss, consistent with Boyle, testified that H.K.'s understanding of child development is very limited, and she expressed concern about his ability to make and keep all of S.K.'s necessary appointments. We conclude from H.K.'s own testimony regarding the feeding of S.K. that he still does not comprehend fundamental nutrition, and that he still refuses to accept responsibility for his shortcomings. H.K.'s testimony also establishes that he is incapable of managing his Social Security income, what

the trial court termed "that small portion of his own affairs," and we accordingly cannot conclude that he has the skills to properly care for S.K. and meet her special needs.

{¶ 74} We further agree with the trial court that H.K. failed to utilize the services and resources that were offered to him for the purpose of changing his behavior. H.K. refused to complete his evaluation with Hrinko. H.K. did not take advantage of the transportation services offered to visit S.K. Importantly, Hrinko's evaluation indicated that H.K. had exhibited a longstanding pattern of failing to take advantage of services available to him. We note, the case plan was prepared in October, 2007, and H.K. did not begin regular counseling with Pendergraft until August, 2008. Pendergraft's testimony, moreover, suggests that H.K. is not completely forthcoming with his therapist, perhaps compromising the counseling process. For example, Pendergraft testified that H.K. manages his own money, and he was unaware that H.K. had been inconsistent in his visitation with S.K. Although Pendergraft knew that H.K. received Social Security income, he did not know that it was for mental health reasons.

{¶ 75} We further agree with the trial court's determination that H.K. demonstrated a lack of commitment toward S.K. by failing to regularly support, visit or communicate with her when able to do so. H.K. cancelled about a quarter of his scheduled visits with his daughter, and H.K.'s attendance at S.K.'s physical therapy sessions was "sporadic, at best," even though Theiss arranged transportation to the sessions for H.K. and wrote down the dates and times of the appointments for him. When confronted, H.K. indicated that he would "do better," but the record reveals

that the pattern of missed appointments continued. According to H.K., he forgot the appointments, or he was "overwhelmed" by problems with E.T..

{¶ 76} Also, while H.K. indicated to the court that he has done part time work in the past, and that he "could" get a job, nothing in the record indicates that he has attempted to provide for S.K. on his own. Lastly, the fact that H.K. originally indicated to the court that he wanted to surrender custody of his daughter at the close of the Agency's case suggests a wavering indecisiveness on his part as to the custody of his daughter. Regarding the trial court's determination that H.K. abandoned S.K., the State concedes and we agree that the trial court was incorrect in making this finding. Our analysis, however, makes clear that, irrespective of that misstatement, clear and convincing evidence was presented justifying the award of permanent custody to the Agency.

{¶ 77} We find that the trial court considered all relevant factors in determining S.K.'s best interest, and the record contains competent, credible evidence upon which the court concluded that the essential statutory elements for a termination of parental rights had been established. H.K.'s sole assignment of error is overruled.

{¶ 78} The judgment of the trial court is affirmed.

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GRADY, J. and FROELICH, J., concur.

Copies mailed to:

Roger A. Ward
Jon Paul Rion
Hon. Joseph N. Monnin