

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

IN RE:

CASE NO. 5-15-01

E.C.

ALLEGED DEPENDENT CHILD.

OPINION

[APRIL CUTRIGHT - APPELLANT].

**Appeal from Hancock County Common Pleas Court
Juvenile Division
Trial Court No. 2013 3048**

Judgment Affirmed

Date of Decision: June 8, 2015

APPEARANCES:

***F. Stephen Chamberlain* for Appellant**

***Rebecca S. King-Newman* for Appellee**

SHAW, J.

{¶1} Mother-Appellant, April Cutright (“April”) appeals the January 16, 2015 judgment of the Hancock County Court of Common Pleas, Juvenile Division, granting the motion for permanent custody of her child, E.C., filed by Appellee, the Hancock County Job and Family Services—Children’s Protective Services Unit (“the Agency”), and terminating April’s parental rights.

{¶2} In late December of 2013, April gave birth to E.C. On December 30, 2013, the Agency filed a complaint alleging E.C. to be a dependent child, pursuant to R.C. 2151.04(C) and (D), and seeking temporary custody of E.C. The grounds cited in the complaint were based upon April’s history with the Agency in a 2012 case involving her oldest child, S.F., who was born in 2011. The complaint specified that S.F. was removed from April’s custody due to allegations of physical abuse which were later substantiated. The complaint further highlighted April’s lack of improvement with the case plan objectives promoting reunification with S.F. and noted that the Agency’s motion for permanent custody of S.F. was granted by the trial court on October 21, 2013. The case involving the termination of April’s parental rights as to S.F. was on appeal at the time the complaint regarding E.C. was filed. Notably, E.C.’s father was undetermined at this time.

{¶3} On January 2, 2014, the trial court held a shelter care hearing. In a subsequent judgment entry dated January 9, 2014, the trial court found probable cause for E.C.’s removal from April’s custody and also found that there were no

suitable relatives to assume custody of E.C. The trial court placed E.C. in the emergency temporary custody of the Agency.

{¶4} On February 13, 2014, the trial court held an adjudication hearing. In its February 14, 2014 entry, the trial court entered judgment finding that E.C. was a dependent child. The trial court noted that all parties agreed to the adjudication. The Agency's temporary custody of E.C. was continued and the Agency's case plan was approved and adopted by the trial court.

{¶5} On March 31, 2014, the Agency filed a motion to amend the complaint and to add a party based upon the legal establishment of Robert Purdy ("Robert") as E.C.'s father. The trial court subsequently granted the motion adding Robert as a party to the case.

{¶6} On April 28, 2014, this Court affirmed the trial court's grant of the Agency's motion for permanent custody of S.F. and the termination of April's parental rights as to S.F.

{¶7} On May 23, 2014, the Agency filed a motion, pursuant to R.C. 2151.419(A)(2)(e), to bypass the statutory requirement that the Agency make reasonable efforts to reunify E.C. with Robert on the basis that Robert's parental rights had been involuntarily terminated in four prior Children's Services cases. On June 12, 2014, the trial court held a hearing on the matter and in a subsequent judgment entry granted the Agency's motion. Therefore, as it related to Robert, the Agency was not required to "make reasonable efforts to prevent the removal of

the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home." R.C. 2151.419(A)(2).

{¶8} On September 23, 2014, the Agency filed a second motion for a so-called "reasonable efforts bypass." In this motion, the Agency requested a hearing to determine whether it is required to make reasonable efforts toward reunification as it related to April. The Agency cited April's 2012 case with S.F. which resulted in the involuntary termination of her parental rights. The Agency also stated that it intended to proceed with a motion for permanent custody once the issue on reasonable efforts was resolved by the trial court. On October 22, 2014, the trial court held a hearing on the matter and subsequently determined that the Agency was not required to make reasonable reunification efforts as to April.

{¶9} On October 31, 2014, the Agency filed a motion for permanent custody of E.C. and for the termination of April's and Robert's parental rights.

{¶10} On January 13, 2015, the trial court conducted a hearing on the Agency's motion for permanent custody. Rebecca Shumaker, the Agency's ongoing case worker assigned to E.C.'s case, was the primary witness to testify on behalf of the Agency. Shumaker recalled that she first became involved with the case in January 2014, shortly after E.C. was born.

{¶11} Regarding E.C.'s father, Shumaker testified that Robert had five other children in addition to E.C. and that all but one were in the permanent

custody of a Children's Services Agency.¹ The judgment entries granting the respective agencies permanent custody and terminating Robert's parental rights with respect to four of his children were admitted as exhibits at the permanent custody hearing. Shumaker recalled meeting with Robert in April of 2014, shortly after his paternity in this case was established. Robert had been recently involved in an assault case in which he was "jumped" by several other individuals. Robert's mouth was wired shut as a result of the injuries he sustained during the altercation. Despite his impairment, Robert was able to clearly articulate to Shumaker that he wanted nothing to do with E.C. or the Agency's case, and that he especially did not want to be involved with or to be contacted by April. Shumaker characterized Robert's tone as "very angry" and she stated that Robert was "very upset" that E.C. was his child. (Doc. No. at 50).

{¶12} Shumaker testified that during this conversation, Robert twice threatened violence towards April and indicated that he had a gun. He also informed her that he was a member of "hate gang" and showed her tattoos evidencing his affiliation. (Doc. No. 76 at 102). As a result of her interaction with Robert, Shumaker submitted a formal request that home visits with Robert be suspended due to safety concerns and that she be permitted to meet with Robert at

¹ Shumaker also testified that Robert's fifth child referred to above was in a relative placement living with Robert's mother, in addition to a sixth child who was born to Robert's wife in prison. Shumaker stated that the placement was interrupted after Robert's mother threw gasoline on Robert and tried to set him on fire. She further indicated that Robert's brother was also living in the home and that he stabbed Robert during a separate incident.

the Agency or another approved safe location. The Agency requested a hearing on the reasonable efforts determination or a “bypass” based in part on Robert’s expression that he did not want to work with the Agency and that he had no interest in preserving his parental rights. Notably, Robert failed to make further contact with Shumaker after this initial home visit and he also failed to make an appearance at any of the court proceedings in this case despite being served with proper notice.

{¶13} With respect to April, Shumaker recalled that the Agency waited to file its request for a “reasonable efforts bypass” determination because April had been working with the Agency on the case plan and the prior case involving S.F. was still pending on appeal. Shumaker testified that April failed to start services relating to the case plan for several months and that when she did start to attempt to meet the objectives, she made little or no progress in the areas that had been identified as concerns—the majority of which were the same issues present during the 2012 case involving S.F.

{¶14} Specifically, the case plan required April to participate in mental health services to address her diagnosis for adjustment disorder and a learning disorder. Shumaker explained that these services were a continuation of the services April received in the case involving S.F. Shumaker testified that April only sporadically complied with this case plan objective. She recalled that April was dissatisfied with her counselor and requested a new one, which was honored.

Yet, April failed to follow through by neglecting to schedule appointments with the new counselor resulting in a large gap in her services.

{¶15} April was also required to complete parenting programs at the Family Resource Center to acquire basic parenting skills. Shumaker testified that April did not begin the classes until six months after the case plan was approved by the trial court. Shumaker testified to her experience with April in her capacity as a parent educator in the case with S.F. Shumaker explained that after S.F. was born, April was homeless and living with different families in the area, some of which had a history with the Agency. Shumaker recalled helping April get situated in a domestic violence shelter and instructing her in a hands-on parenting class when April still had custody of S.F. Shumaker testified that, in the prior case, it was very apparent that April lacked the basic skills to be able to provide for herself and S.F.

{¶16} Despite participating and completing parenting programs in S.F.'s case and in the current case with E.C., Shumaker testified that the same issues persisted in both cases and expressed serious concern regarding April's ability to provide for the basic needs of E.C. Shumaker's testimony in this respect was corroborated by the testimony of Tabitha Whaley, a case manager at a local domestic violence shelter who observed April's supervised visitations with E.C. Both witnesses recounted April's inability to master fundamental nurturing skills, such as preparing a bottle of formula without assistance, properly changing

diapers, and April's failure to recognize E.C.'s hunger cues or to adequately anticipate and address E.C.'s developmental needs. Shumaker explained that April's lack of improvement in this area was one of the primary reasons that April's weekly two-hour supervised visitations with E.C. did not progress into longer or unsupervised visitations.

{¶17} The case plan also specified an objective that April maintain safe and stable housing. Shumaker testified that in the past April had a habit of permitting abusive, unsafe, and inappropriate people to live in her home. Shumaker stated that when she visited April's current home, it appeared as if April had not been consistently living in the residence. In particular, Shumaker recalled very little furnishings in the home and that April had stated that she periodically stayed with other people in the community including relatives of S.F.'s father.

{¶18} In addition, Shumaker testified that she received reports of two men living in April's current home, one of whom was the alleged father of April's third child, A.C., who was born shortly before the permanent custody hearing on E.C. April indicated to Shumaker that she was not living in the home with the men, but was staying with the grandmother of S.F.'s father. Shumaker explained that this was problematic because the home where April claimed to be staying had a history of domestic violence and April had informed Shumaker in the past that the grandmother had made threats against her. There were also indications that family members of the grandmother had vocalized their disdain with April living at the

residence. Shumaker relayed her concern with April's inability to maintain safe and stable housing and her poor decision making in choosing to stay in an abusive household when she had the opportunity to live in her own residence alone.

{¶19} Due to April's history, the case plan also called for April to enroll, attend, and participate in domestic violence victim's programs through a local facility and to comply with all the recommendations of the counselors. April completed the classes. However, there was evidence that April continued a relationship with S.F.'s father, who was one of the domestic violence perpetrators against her and who was also serving a prison term for domestic violence in an unrelated case. Shumaker expressed concern with April's constant contact with her past abusers. Specifically, Shumaker stated that S.F.'s father, Robert, and the alleged father of April's third child each requested that "April stop contacting them, stop pestering them, no longer call them." (Doc. No. 76 at 129). She recalled her conversation in April 2014 with Robert in which he stated that he would beat April up if she continued to contact him. She relayed Robert's threats to April and even told her that Robert had a gun. Nevertheless, Shumaker testified that April contacted Robert in November 2014 a week before she completed the domestic violence victim's classes.

{¶20} Shumaker also discussed April's lack of support system and noted April's parents' history with the Agency which resulted in April's removal from their custody. Shumaker stated that April indicated her adoptive mother could

assist her with raising E.C.; however April's adoptive mother lived over three hours away. Moreover, there was evidence at the permanent custody hearing that E.C. has since bonded with her foster parents and that she lived in the same household as her half-sibling, S.F., who was also very bonded with E.C. Based on the foregoing evidence and her experience with the case, Shumaker testified that she believed it was in E.C.'s best interest for permanent custody to be granted to the Agency.

{¶21} Notably, Shumaker's opinion regarding permanent custody was also shared by, Gwen Kuenzli, the CASA appointed to the case. Kuenzli testified that she spent a considerable amount of time on the case and stated that in her opinion neither Robert nor April have the skills or the resources to provide E.C. with a safe and stable home. She acknowledged that April tried her best to comply with the objectives in the case plan, but observed that April's choices have interfered with her ability to successfully complete the case plan. Thus, she believed placing E.C. in the Agency's permanent custody was in E.C.'s best interest.

{¶22} For her part, April provided testimony in support of her position that the trial court should deny the Agency's motion for permanent custody of E.C. She denied being in a current relationship with S.F.'s father, but admitted the relationship had just ended a couple weeks before the permanent custody hearing. She also stated that she had not been employed at a full-time job since 2012 and was not currently working because she had just given birth to her third child.

April also admitted that she did not comply with all the domestic violence victim's programs as required by the case plan. April expressed her love for E.C. and claimed that she just needed more time to learn basic parenting skills and blamed the Agency for her failure to comply with the case plan. However, April also admitted she had a history of allowing abusive people in her life and acknowledged the safety concerns such behavior presented.

{¶23} On January 16, 2015, the trial court issued its judgment entry granting the Agency's motion for permanent custody of E.C. The trial court found by clear and convincing evidence that E.C. cannot and should not be placed with either parent within a reasonable time and that it was in E.C.'s best interest to grant the Agency's permanent custody motion.

{¶24} April filed this appeal, asserting the following assignments of error.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT COMMITTED ERROR IN GRANTING PERMANENT CUSTODY OF THE MINOR CHILD TO THE STATE OF OHIO.

ASSIGNMENT OF ERROR NO. II

THE STATE DID NOT MEET ITS BURDEN OF PROOF OF A CLEAR AND CONVINCING EVIDENCE STANDARD.

ASSIGNMENT OF ERROR NO. III

THE TRIAL COUNSEL FOR THE APPELLANT WAS INEFFECTIVE AND AS SUCH, THE APPELLANT WAS DENIED THE FUNDAMENTAL RIGHT TO COUNSEL.

{¶25} Due to their interrelated nature, we elect to discuss the first and second assignments of error together.

First and Second Assignments of Error

{¶26} In her first and second assignments of error, April contends that the trial court erred in granting the Agency's motion for permanent custody of E.C. and claims that the Agency failed to prove its case by clear and convincing evidence.

{¶27} Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period, or that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D). *See* R.C. 2151.414(B)(1) and 2151.414(B)(2); *see also In re William S.*, 75 Ohio St.3d 95, 99 (1996).

{¶28} In the case sub judice, the trial court found that the first prong of the permanent custody test was satisfied because E.C. could not be placed with either parent within a reasonable time or should not be placed with either parent. In reaching that conclusion, the trial court explicitly relied upon its consideration of

the subsections R.C. 2151.414(E)(1)-(16) and made the following determination in its judgment entry granting permanent custody of E.C. to the Agency:

Particularly this court finds that following the placement of the child outside her home and, notwithstanding reasonable cause [sic] planning and diligent efforts by the Agency to assist the parents to remedy the problems that initially caused the child to be placed in foster care, the parents have failed continuously and repeatedly to substantially remedy the conditions which caused said child to originally be placed in care [sic] on January 2, 2014. In determining these factors, the court has considered parental utilization of social and rehabilitative services and material resources that were made available to the parents with the purpose of changing their conduct to allow them to assume and maintain parental duties. The court finds that the parents are unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing in this matter. Of particular significance is the undisputed fact that mother has had another one of her children permanently removed from her custody and the father, Robert Purdy, has had four of his children permanently removed. At no time during the course of this case has Robert Purdy had any contact with [E.C.] and his present residence is unknown. The court finds that the parents have not completed any objective of the case plan designed to return the child to their custody.

(Doc. No. 63 at 3). Notably, the trial court's findings specifically implicate the following subsections relative to its determination that E.C. could not be placed with either parent within a reasonable time or should not be placed with either parent: R.C. 2151.414(E)(1) [failure to remedy conditions despite reasonable case planning]; R.C. 2151.414(E)(4) [lack of commitment]; and R.C. 2151.414(E)(11) [prior involuntary termination of parental rights], and R.C. 2151.414(E)(10) [abandonment] in regard to Robert.

{¶29} Regarding the second prong of the permanent custody test, the trial court must determine whether a grant of permanent custody is in a child's best interest. Specifically, the trial court must consider all the relevant factors, including those enumerated in R.C. 2151.414(D): the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, the child's need for permanence in his life, and any of the factors in R.C. 2151.414(E)(7) to (11) if relevant. *See In re R.G.*, 9th Dist. Nos. 24834 & 24850, 2009–Ohio–6284, ¶ 11. “Although the trial court is not precluded from considering other relevant factors, the statute explicitly requires the court to consider all of the enumerated factors.” *In re Smith*, 9th Dist. No. 20711, 2002 WL 5178, *3, (Jan. 2, 2002); *see also In re Palladino*, 11th Dist. No.2002–G–2445, 2002–Ohio–5606, ¶ 24. Furthermore, in evaluating the evidence regarding the best interest of the child, no single factor is to be “given greater weight or heightened significance.” *In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, ¶ 57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006–Ohio–5513, ¶ 56. All factors relevant to the best interest of the child are to be weighed together. *In re Schaefer* at ¶ 64.

{¶30} The trial court stated the following in its judgment entry granting permanent custody regarding the best interest analysis:

In determining the best interest of the child, the court has considered all relevant factors included in Section 2151.414(D)(1) through (5), and Section 2151.414(E)(7) to (11) of

the Revised Code, the court has considered the relationship of the child with her parents, relatives, foster parents, out-of-home providers and other people who may significantly affect the child's need for legally secure permanent placement and the probability that this type of placement can be achieved only through the granting of permanent custody to [the Agency]. The court further has considered the custodial history of the child and the fact that father has never shown any interest in any of his children and has had no contact with [E.C.] since her birth. Despite hours of effort by the caseworker and other professionals, the mother had not been able to master even the most basic nurturing skills and to the present does not know how to make a bottle for [E.C.]. The mother no doubt loves her daughter and has been faithful in her visitations but has made no progress in being able to care for [E.C.] without constant supervision by service providers.

(Doc. No. 63 at 3).

{¶31} On appeal, April argues that the trial court erred in granting the Agency's motion for permanent custody because the record demonstrates that she was cooperative with the Agency throughout the case, completed parenting classes, participated in counseling, and regularly attended her visitations with E.C. Specifically, April asserts that "[t]he main thrust of [the Agency's] evidence was based upon the opinion of the caseworker that April did not apply what she had learned and asked for help from other adults. The fact is that April had no time to parent a child because she was restricted in her contacts with her children both in this case and in the case of her older child [S.F.] who was removed from her care at an early age." (Appt. Brief at 9-10). Our review of the record reveals that

April's contentions on appeal both mischaracterize the testimony at the permanent custody hearing and are unsupported by the evidence.

{¶32} The record establishes that the Agency gave April ample time to satisfy the case plan objectives and even delayed filing the motion for a reasonable efforts bypass determination for six months following the release of the decision by this Court affirming the trial court's ruling regarding the Agency's permanent custody of S.F. While both the Agency and the trial court acknowledged April's cooperation with service providers and her compliance with some of the requirements in the case plan, the evidence shows that April simply failed to demonstrate that she was capable of acquiring fundamental skills to provide for E.C.'s most basic needs. There is no indication from the record that April could improve upon these deficits if she was merely given additional time. Moreover, "R.C. Chapter 2151 evidences a clear purpose in preventing children from languishing in the foster care system for years." *In re C.C.*, 12 Dist. Nos. CA2011-11-113, CA2011-11-127, 2012-Ohio-1291, ¶ 33.

{¶33} In addition, many of the concerns identified by the Agency in the 2012 case with S.F. regarding April's poor decision making and her inability to provide a safe and stable home were also present in the current case with E.C. Specifically, the evidence demonstrates that April continued to engage in a dangerous pattern of seeking out and surrounding herself with people who have abused her in the past and that she lacked any comprehension that such conduct

puts herself, as well as any child in her care, at a substantial risk of serious physical harm. Accordingly, we find that the record supports the trial court's determination that E.C. cannot be placed with either parent within a reasonable time or should not be placed with either parent and that granting the Agency's motion for permanent custody is in the best interest of E.C.

{¶34} April argues in her second assignment of error that the trial court's decision was erroneous because the Agency failed to prove its case by a clear and convincing evidence standard. We note that "[t]he standard for appellate review in a permanent-custody case is whether the trial court had clear and convincing evidence to make an award of permanent custody." *In re Terrence*, 6th Dist. Lucas No. L-05-1018, 2005-Ohio-3600, ¶ 86, citing *In re Hiatt*, 86 Ohio App.3d 716, 725 (4th Dist.1993).

{¶35} The "clear and convincing evidence" standard is a higher degree of proof than the "preponderance of the evidence" standard generally used in civil cases, but is less stringent than the "beyond a reasonable doubt" standard used in criminal cases. *State v. Schiebel*, 55 Ohio St.3d 71, 74, (1990). On appeal from an order terminating parental rights, an appellate court will not reverse the trial court's judgment if, upon a review of the record, it determines that the trial court had sufficient evidence to satisfy the clear and convincing evidence standard. *In re I.G.*, 3d Dist. Marion Nos. 9-13-43, 9-13-44, 9-13-45, 2014-Ohio-1136, ¶ 25.

{¶36} In support of this assignment of error, April asserts a short, three-sentence argument that the Agency failed to meet its burden because it only presented the testimony of the Agency's ongoing caseworker overseeing the case and of the supervised visitation monitor at the permanent custody hearing. April claims that this alone demonstrates the evidence was insufficient. She also points to the fact that she provided testimony refuting many of the claims made by the Agency.

{¶37} Initially, we note that April's argument based solely on the number of witnesses presented by the Agency at the permanent custody hearing is disingenuous and has no merit. Both of these witnesses were integrally involved with April throughout the proceedings and offered testimony in support of each element required to be proven in this case. Moreover, it is a fundamental legal tenant that when reviewing the weight of the evidence, an appellate court generally must defer to the fact-finder's credibility determinations. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179. April admitted on the stand that she was in continuous contact with S.F.'s father, who was one of her past abusers, and admitted that she lacked the ability to master the basic skills to care for E.C. despite the Agency's efforts to assist her. It was well within the province of the trial court to assess the credibility of the witnesses and accord the weight to be given to their testimony in rendering its decision and, therefore, we will not disturb the trial court's credibility determinations on appeal.

{¶38} In sum, we conclude that the record supports the trial court's conclusion that the Agency met its burden in proving by clear and convincing evidence that: (1) E.C. cannot be placed with either parent within a reasonable time or should not be placed with either parent; and (2) that granting the Agency's motion for permanent custody is in the best interest of E.C. Accordingly, we overrule the first and second assignments of errors.

The Third Assignment of Error

{¶39} In her third assignment of error, April raises an ineffective assistance of counsel claim. Specifically, April asserts that trial counsel's performance was deficient for failing to "effectively" challenge the evidence presented by the Agency in support of its case.

{¶40} Section 2151.352 of the Revised Code provides that parents are guaranteed the right to counsel at all stages of a permanent custody proceeding. This right to counsel includes the right to effective assistance of counsel. *In re Brooks*, 10th Dist. Nos. 04AP-164, 04AP-202, 04AP-165, 04AP-201, 2004-Ohio-3887, ¶ 24. In permanent custody proceedings, where parents face losing their children, we apply the same test as the test for ineffective assistance of counsel in criminal cases. *In re Heston*, 129 Ohio App.3d 825, 827 (8th Dist.1998).

{¶41} To prove an allegation of ineffective assistance of counsel, the appellant must satisfy a two-prong test. First, the appellant must establish that counsel's performance has fallen below an objective standard of reasonable

representation. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus. Second, the appellant must demonstrate he or she was prejudiced by counsel's performance. *Id.* To show that he or she has been prejudiced by counsel's deficient performance, the appellant must prove that, but for counsel's errors, the result of the trial would have been different. *Bradley* at paragraph three of the syllabus. Appellant bears the burden of proof on the issue of counsel's effectiveness. *State v. Calhoun*, 86 Ohio St.3d 279, 289 (1999). In Ohio, a licensed attorney is presumed competent. *Id.*

{¶42} April's argument under this assignment of error consists of the following two sentences in her appellate brief: "Trial counsel failed to effectively challenge the evidence put forward by CPSU [the Agency] either by cross examination or by presenting witnesses in support of the mother. In failing to challenge the CPSU's [sic] evidence, trial counsel did not protect the rights of the mother and trial counsel's performance must be considered ineffective." (Appt. Brief at 12). April neglects to allege any specific factual basis or to provide a single citation to the record in support of her argument that her trial counsel was ineffective. Moreover, April has failed to substantiate any claim that she was prejudiced by her trial counsel's performance at the permanent custody hearing and that the outcome would have been different but for trial counsel's

performance. Accordingly, April has not satisfied her burden in proving her trial counsel's ineffectiveness and, as such, we overrule her third assignment of error.

{¶43} For all these reasons, the assignments of error are overruled and the judgment is affirmed.

Judgment Affirmed

PRESTON and WILLAMOWSKI, J.J., concur.

/jlr