[Cite as *In re Anthony/Bentley Children*, 2001-Ohio-1383]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	**JUDGES:**
	:	**Hon. Julie A. Edwards, P. J.**
	:	**Hon. John W. Wise, J.**
IN RE:	:	**Hon. John F. Boggins, J.**
	:	
	:	
	:	**Case No. 2001CA00179**
	:	
	:	
ANTHONY/BENTLEY CHILDREN	:	**O P I N I O N**

CHARACTER OF PROCEEDING:	**Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. JU111856**
JUDGMENT:	**Affirmed**
DATE OF JUDGMENT ENTRY:	**September 24, 2001**

APPEARANCES:

For Appellant	**For Appellee**
SUE SELEGEAN-DOSTAL **116 Cleveland Avenue, NW** **Suite 309** **Canton, Ohio 44702**	**QUAY D. COMPTON** **SCDJFS** **220 East Tuscarawas Street** **Canton, Ohio 44702**

Appellant Lisa Bentley appeals the decision of the Stark County Court of Common Pleas, Juvenile Division, that granted permanent custody of her four minor children to Appellee Stark County Department of Job and Family Services ("Department"). The following facts give rise to this appeal.

On April 19, 2000, the Department filed a complaint alleging the neglect of Sweetness Anthony, Lazarus Bentley, Heavenly Bentley and Anthony Bentley. The trial court awarded the Department temporary custody of the children, following a shelter care hearing, on April 20, 2000. The trial court conducted an adjudicatory hearing on July 11, 2000. At this hearing, the Department amended its complaint to seek temporary custody of the four children rather than permanent custody. Appellant appeared at the hearing and stipulated to a finding of neglect. The trial court awarded temporary custody of the four children to the Department.

The Citizen Review Board conducted a dispositional review hearing on October 19, 2000. The Department continued with temporary custody of the four children. On February 12, 2001, the Department again filed a complaint for permanent custody. The trial court conducted an annual review hearing on March 16, 2001. Appellant did not appear for the hearing. Following a continuance, the trial court conducted the permanent custody trial on May 15, 2001. On May 18, 2001, the trial court granted permanent custody of appellant's four children to the Department.

Appellant timely filed a notice of appeal and sets forth the following assignments of error for our consideration:

I. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED AN ERROR AT LAW WHEN IT FAILED TO RECOGNIZE THAT THE CHILDREN COULD BE RETURNED TO APPELLANT WITHIN A ONE YEAR PERIOD, AND WHEN IT FAILED TO CONTINUE THE HEARING TO ALLOW THE APPELLANT TO PRESENT EVIDENCE IN REGARDS TO HER MEDICAL CONDITION.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED AN ERROR AS TO LAW WHEN IT FOUND THAT IT WOULD BE IN THE CHILDREN'S BEST INTEREST TO BE PLACED IN THE PERMANENT CUSTODY OF THE DEPARTMENT OF JOB AND FAMILY SERVICES, AND WHEN IT FAILED TO CONTINUE THIS PORTION OF THE PERMANENT CUSTODY HEARING TO ALLOW THE SCDJFS TIME TO INVESTIGATE RELATIVE PLACEMENT.

I, II

We will address appellant's First and Second Assignments of Error simultaneously. Appellant contends, in her First Assignment of Error, the trial court abused its discretion when it failed to recognize that her four children could be returned to her within a one-year period. Appellant also contends, under this assignment of error, that the trial court abused its discretion when it failed to continue the hearing to allow her to present evidence in regards to her medical condition.

In her Second Assignment of Error, appellant maintains the trial court abused its discretion when it found that it would be in the minor children's best interest to be placed in the permanent custody of the Department. Appellant also contends the trial court abused its discretion when it failed to continue the best interest portion of the trial to allow the Department to investigate relative placement. We disagree with both assignments of error.

Although not assigned as error, appellant essentially claims the trial court abused its discretion when it found that her four children could not be returned to her within a one-year period and that permanent placement with the Department was in the best interests of the children as such conclusion is against the manifest weight of the evidence. In applying the manifest weight standard of review, our role is to determine whether there is relevant, competent and credible evidence upon which a fact finder could base its judgment. *Cross Truck v. Jeffries* (Feb. 10, 1982), Stark App. No. CA-5758, unreported. Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.* (1978), 54 Ohio St.2d 279, 281.

Under R.C. 2151.414(B)(1),

> *** * * 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 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 ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.**
>
> **(b) The child is abandoned.**
>
> **(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.**

> **(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.**

In determining the best interest of a child, R.C. 2151.414(D) provides:

> *** * * the court shall consider all relevant factors, including, but not limited to, the following:**
>
> **(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child;**
>
> **(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;**
>
> **(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;**
>
> **(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;**
>
> **(5) Whether any of the factors in division (E)(7) to (11) of this section apply in relation to the parents and child.**

In the case *sub judice*, under R.C. 2151.414(B)(1)(d), the trial court found the children had been in the custody of the Department continuously for the past thirteen months and, under R.C. 2151.414(B)(1)(b), that appellant had abandoned the children by virtue of her lack of contact with them and failure to substantially comply with her case plan. Findings of Fact and Conclusions of Law, May 18, 2001, at 5. Our review of the record indicates the trial court incorrectly relied upon R.C. 2151.414(B)(1)(d). However, there is sufficient evidence contained in the record to

support the trial court's finding under R.C. 2151.414(B)(1)(b) concerning abandonment.

If the trial court finds that a child has been abandoned, there is no requirement, under R.C. 2151.414(B), that the trial court also find that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. Even if this court determined that the trial court was required to make that finding, there was clear and convincing evidence supporting such finding.

The Department established the following goals for appellant: (1) complete a psychological evaluation and follow all recommendations; (2) continue and complete treatment at NOVA mental health; (3) cooperate with NOVA to address substance abuse, drop urine screens upon request, complete outpatient drug treatment program at Deliverance House; and (4) complete parenting skills classes with Goodwill Industries. Appellant was not able to complete any of these goals except for the completion of the psychological evaluation. Tr. at 11.

Beth Wengerd, the Department's ongoing family service worker, testified about appellant's efforts under the case plan. Ms. Wengerd began by reviewing the Department's previous history with the family. In addition to the four children at issue in this case, appellant has five other children that have been removed from her custody due to her failure to comply with case plan objectives. *Id*. at 6, 13. Further, the Department has previously had custody of two of the minor children involved in

this matter, however, appellant successfully completed her goals under the case plan and the Department returned the two children to appellant's custody. *Id*.

Ms. Wengerd testified that the Department's current involvement is due to concerns of drug abuse by appellant. *Id*. at 6. Ms. Wengerd talked with appellant on a regular basis and she was "very aware" of what she had to do to regain custody of her children. *Id*. at 13. Ms. Wengerd made all of the necessary referrals in order for appellant to obtain the required services but appellant failed to do so. *Id*.

As to appellant's case plan goals, Ms. Wengerd testified that appellant did complete the psychological evaluation. *Id*. at 11. The initial evaluation recommended that appellant attend individual therapy, submit to drug screens on a weekly to bi-weekly basis and submit to re-evaluation. *Id*. Appellant failed to attend individual therapy and submit to the urine screens. Id. Appellant did sign-up for a psychological re-evaluation on May 22, 2001. *Id*. Appellant also failed to comply with NOVA and only saw her psychiatric doctor "sporadically." *Id*.

Ms. Wengerd also testified that appellant did not complete her outpatient drug treatment at Deliverance House. *Id*. at 12. However, appellant did complete outpatient drug treatment at NOVA outpatient program by attending approximately half of the sessions. *Id*. Appellant did not attend the Relapse Prevention Program after completing the outpatient program at NOVA. *Id*. Appellant only submitted a total of three urine screens and did not submit anymore after October 2000, even though Ms. Wengerd asked her to do so repeatedly. *Id*.

As to the parenting classes, Ms. Wengerd testified that appellant started Goodwill Parenting on three separate occasions and was discharged each time for not attending. *Id*. Appellant initially visited with her children on a fairly regular basis and there appeared to be a bond between the children and appellant. *Id*. at 19. Ms. Wengerd testified that appellant only had five visits with the children from October 2000 to May 2001. *Id*. at 15. Appellant missed five scheduled visits where the children had been transported for the visit and appellant failed to appear. *Id*. at 9.

Marilyn DeMetro, appellant's case manager from NOVA, also testified. Ms. DeMetro became involved with appellant at the end of 2000. *Id*. at 29. Ms. DeMetro stated that appellant did not complete her involvement with NOVA because she did not meet with her monthly as required to maintain an open case. *Id*. at 30-31. As a result, appellant's case was in the process of being closed due to non-compliance. *Id*. at 31-32.

Ms. Wengerd also testified regarding the best interests of the children under R.C. 2151.414(D). Sweetness is ten years old, Lazarus is eight years old, Heavenly is three years old and Anthony is five years old. All four of the children are African-American. *Id*. at 40. None of the children suffer from developmental disability, however, Lazarus suffers from Attention Deficit Disorder and takes medication for behavioral problems. *Id*. at 40- 41. The current foster placements are interested in adopting the children. *Id*. at 41-42. Although a bond does exist between appellant and her children, the children are also bonded to their foster parents. *Id*. at 44. The children are also bonded to each other and the foster parents have agreed to continue to facilitate visits even after the permanent custody hearing. *Id*. at 45.

Ms. Wengerd further testified that the children would benefit from adoption because it would bring stability to their lives. *Id*. All of the children are doing well in school and Sweetness made the honor roll. *Id*. at 46. Based upon her experience with this family, Ms. Wengerd concluded that permanent custody is in the best interest of the children. *Id*. at 47. The guardian *ad litem* also recommended that permanent custody be granted to the Department. Findings of Fact and Conclusions of Law, May 18, 2001, at 6.

Under R.C. 2151.414(B)(1)(a), the trial court must consider certain factors, under R.C. 2151.414(E), 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 trial court did this analysis and found the following factors present:

> **(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. * * *;**
>
> **(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent 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 pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 * * * of the Revised Code;**
>
> *** * ***
>
> **(4) The parent has 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;**

*** * ***

> **(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.**
>
> **(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.**

Based upon the evidence contained in the record and the findings made by the trial court, we conclude clear and convincing evidence exists to support the trial court's finding that appellant's four children could not be returned to her within a one-year period.

Appellant also maintains, under this assignment of error, that the trial court abused its discretion when it failed to continue the hearing to allow her to present evidence in regard to her medical condition. The grant or denial of a continuance is a matter entrusted to the broad, sound discretion of the trial court. *State v. Unger* (1981), 67 Ohio St.2d 65. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

The record does not support the conclusion that the trial court abused its discretion when it denied appellant's request for a continuance. Appellant did not attend the trial, did not inform her counsel of the reason for not attending and did

not provide counsel with any medical documentation concerning her alleged illnesses that she suffered during the pendency of this case.

Finally, appellant maintains the trial court abused its discretion when it denied her request for a continuance of the best interest portion of the trial so the Department could further investigate placement with appellant's sister. Approximately three weeks before trial, appellant's sister expressed an interest in taking custody of appellant's children. The record indicates Ms. Wengerd telephoned appellant's sister, but she never returned the calls. Tr. at 50. Further, Ms. Wengerd was unable to do the background check without the signature of appellant's sister. *Id*. The trial court did not abuse its discretion when it denied appellant's request for a continuance in order to further investigate placement with appellant's sister.

Appellant's First and Second Assignments of Error are overruled.

For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Edwards, P. J., and

Boggins, J., concur.

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JUDGES

JWW/d 829

[Cite as *In re Anthony/Bentley Children*, 2001-Ohio-1383]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN RE:	:	**JUDGMENT ENTRY**
ANTHONY/BENTLEY CHILDREN	:	**CASE NO. 2001CA00179**

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, Stark County, Ohio, is affirmed.

Pursuant to App.R. 24(A)(2), appellant shall pay costs in this matter.

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JUDGES