[Cite as *In re J.J.F*, 2009-Ohio-4736.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
IN THE MATTER OF:	:	Hon. W. Scott Gwin, P.J.
J.J.F., MINOR CHILD	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
	:	
	:	
	:	Case No. 2009-CA-00133
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Stark County Court of Common Pleas, Juvenile Division, Case No. 2008JCV01136
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 8, 2009

APPEARANCES:

For-Appellee	For-Appellant
JAMES B. PHILLIPS SCDJFS 221 Third Street S.E. Canton, OH 44702	KIMBERLY L. STOUT 200 West Tuscarawas Street Suite 200 Canton, OH 44702

Gwin, P.J.

{¶1} Appellant-father Tracy F.[1]. appeals the April 28, 2009, judgment entry of the Stark County Court of Common Pleas, Juvenile Division, which terminated his parental rights with respect to his minor child, J.J.F. nka O., and granted permanent custody of the child to appellee, the Stark County Department of Job and Family Services (hereinafter "SCDJFS").

I. Procedural History

{¶2} On July 17, 2008, the SCDJFS filed a complaint, in case number 2008 JCV 00803, seeking temporary custody of J.J.F. nka O., born July 2008, and alleging the child to be dependent, and/or neglected. After a shelter care hearing on July 18, 2008, the court ordered the child into the emergency temporary custody of the SCDJFS. That case had to be dismissed and refilled due to the adjudication not being completed within 90 days. The current case, 2008 JCV 1136, was filed on October 14, 2008. The shelter care hearing on the new filing was held on October 15, 2008. The court ordered that the child be placed into the emergency temporary custody at that hearing.

{¶3} On December 4**,** 2008, the child was found to be a neglected child and the trial court continued the order of temporary custody with the SCDJFS. The court further found that the agency had made reasonable efforts to prevent the need for removal of the child from the home and approved and adopted the case plan.

{¶4} On February 6, 2009, the SCDJFS filed a motion for permanent custody. On April 1, 2009, a hearing on the motion for permanent custody was held.

{¶5} At that hearing, the following evidence was presented to the trial court.

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[1] For purposes of anonymity, appellant's name is designated by initials only. See, e.g., *In re C.C.,* Franklin App. No. 07-AP-993, 2008-Ohio-2803 at ¶ 1, n.1.

{¶6} The case plan required appellant to receive a parenting evaluation and follow all of the recommendations; receive a Quest assessment and follow all recommendations; maintain stable housing; and maintain stable employment. (T. at 8-9). Appellant completed his Quest assessment and it was recommended that he begin counseling. Appellant started drug counseling on July 30, 2008, but failed to follow through. Appellant's case was closed for non-compliance on September 30, 2008. Appellant signed up again but this case was also closed for non-compliance on November 26, 2008. (T. at 8-9).

{¶7} Appellant did not appear for an appointment at Northeast Ohio Behavioral Health and was not allowed to return to that agency due to Mother's behavior. Appellant was referred to Melymbrosia for his parenting evaluation but did not appear for his two appointments. (T. at 8; 24). Appellant never secured stable housing and employment. (T. at 9).

{¶8} The caseworker was unable to recall whether appellant's drug screens tested positive or negative. (T. at 14). Further, the minor child was scheduled for open-heart surgery during the time in question. The caseworker admitted that appellant had asked to be present at the hospital during the surgical procedure. (T. at 15-16). Between November 20, 2008 and April 20, 2009, neither of the child's parents had requested visitation. (T. at 19-20; 31). The caseworker further testified that subsequent to November 20, 2008, the minor child's ability to leave the foster home was limited due to the medical condition. (T. at 33). There were instances where the child was unable to be taken outside the foster home. (Id.). Further, the foster mother was not receptive to the idea of appellant visiting the child in her home. (Id.). Prior to this time appellant's

visits with the child were appropriate. (T. at 34). Appellant was caring and affectionate toward the child and was sharing responsibility with the child's mother. (Id.).

{¶9} On April 28, 2009, the Court journalized the finding of facts and conclusions of law that granted permanent custody of the child to the SCDJFS.

II. Assignments of Error

{¶10} On appeal, father asserts the following three assignments of error:

{¶11} "I. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF J.J.F. NKA O. TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.

{¶12} "(A). THE DETERMINATION THAT REASONABLE EFFORTS TO ASSIST THE PARENT TO COMPLETE THE CASE PLAN AND THE DEPARTMENT USED REASONABLE EFFORTS TO PREVENT THE REMOVAL OF THE CHILD WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶13} "(B). THE TRIAL COURT'S FINDING THAT THE APPELLANT ABANDONED HIS MINOR CHILD WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE AND THE TRIAL COURT ERRED BY PROCEEDING TO BEST INTERESTS BASED UPON ABANDONMENT.

{¶14} "II. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF J.J.F. NKA O. TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE MINOR CHILD CANNOT OR SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE TIME WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} "III. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF J.J.F. NKA O. TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

A. Burden Of Proof

{¶16} "[T]he right to raise a child is an 'essential' and 'basic' civil right." *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169, quoting *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551. A parent's interest in the care, custody and management of his or her child is "fundamental." Id.; *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388. The permanent termination of a parent's rights has been described as, "* * * the family law equivalent to the death penalty in a criminal case." *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45. Therefore, parents "must be afforded every procedural and substantive protection the law allows." Id.

{¶17} An award of permanent custody must be based upon clear and convincing evidence. R.C. 2151.414(B) (1). The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It

does not mean clear and unequivocal." *In re Estate of Haynes* (1986), 25 Ohio St.3d 101, 103-104, 495 N.E.2d 23.

B. Standard of Review

{¶18} Even under the clear and convincing standard, our review is deferential. If some competent, credible evidence going to all the essential elements of the case supports the trial court's judgment, an appellate court must affirm the judgment and not substitute its judgment for that of the trial court. *In re Myers III,* Athens App. No. 03CA23, 2004-Ohio-657, ¶ 7, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54. The credibility of witnesses and weight of the evidence are issues primarily for the trial court, as the trier of fact. *In re Ohler,* Hocking App. No. 04CA8, 2005-Ohio-1583, ¶ 15, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

III. Requirements for Permanent Custody Awards

{¶19} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court must schedule a hearing, and provide notice, upon filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶20} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, 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 and the parents cannot be located; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶21} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B) (1) (a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶22} A. Reasonable Efforts to Prevent the Removal of the Child from the Child's Home.

{¶23} In the case judice, SCDJFS filed its Motion for Permanent Custody pursuant to R.C. 2151.414. Pursuant to R.C. 2151.419, the agency that removed the child from the home must have made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, or make it possible for the child to return home safely. The statute assigns the burden of proof to the agency to demonstrate it has made reasonable efforts.

{¶24} However, R.C. 2151.419 does not apply in a hearing on a motion for permanent custody filed pursuant to R.C. 2151.413 and 2151.414. *In re C.F.*, 113 Ohio St.3d 73, 81, 2007-Ohio-1104, 862 N.E.2d 816, (Citation omitted). Therefore, the trial court was not required to make a specific finding that SCDJFS had made reasonable

efforts to reunify the family. In *In re C.F.,* supra, the court also stated that this does not mean that the agency is relieved of the duty to make reasonable efforts. “At various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification. To the extent that the trial court relies on 2151.414(E)(1) at a permanent custody hearing, the court must examine the reasonable case planning and diligent efforts by the agency to assist the parents' when considering whether the child cannot and should not be placed with the parent within a reasonable time.” Id. at paragraph 42.

{¶25} R.C. 2151.414. (E)(1) requires proof that the SCDJFS engaged in reasonable case planning and made “diligent” efforts to assist the parents in remedying the problems that caused the removal of the children.

{¶26} Appellee filed its request for permanent custody pursuant to R.C. 2151.414. A review of the record indicates at multiple review hearings, the Court found SCDJFS utilized reasonable efforts to reunify the family. Therefore, the showing of reasonable efforts was not required to be proven by the state or found by the Court during the permanent custody hearing.

{¶27} One particular section, R.C. 2151.414(E) (I), does require the court to examine the "reasonable case planning and diligent efforts by the agency to assist the parents" when determining whether a child should not or could not be returned to a parent within a reasonable time. This requirement and examination should not be confused with the reasonable efforts requirement as set forth by R.C. 2151.419 as requiring the trial court to determine reasonable efforts at every permanent custody motion brought under R.C. 2151.413 or 2151.414.

{¶28} We find that the evidence established that SCDJFS did provide services designed to alleviate the problem that led to the child's removal and did make diligent efforts to assist appellant in remedying the problem.

{¶29} B. Parental Placement within a Reasonable Time-R.C. 2151.414(B) (1) (a).

{¶30} The court must consider all relevant evidence before determining the child cannot be placed with either parent within a reasonable time or should not be placed with the parents. R.C. 2151.414(E). The statute also indicates that if the court makes a finding under R.C. 2151.414(E) (1) – (15), the court shall determine the children cannot or should not be placed with the parent. A trial court may base its decision that a child cannot be placed with a parent within a reasonable time or should not be placed with a parent upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with the parent within a reasonable time. See *In re: William S*., 75 Ohio St.3d 95, 1996-Ohio-182, 661 N.E.2d 738; *In re: Hurlow* (Sept. 21, 1998), Gallia App. No. 98 CA 6, 1997 WL 701328; *In re: Butcher* (Apr. 10, 1991), Athens App. No. 1470, 1991 WL 62145.

{¶31} R.C. 2151.414(E) sets forth factors a trial court is to consider 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. Specifically, Section (E) provides, in pertinent part, as follows:

{¶32} "(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code 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 held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code 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:

{¶33} "(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 changing parental conduct to allow them to resume and maintain parental duties.

{¶34} "***

{¶35} "(16) Any other factor the court considers relevant."

{¶36} R.C. 2151.414(D) requires the trial court to consider all relevant factors in determining whether the child's best interests would be served by granting the permanent custody motion. These factors include but are not limited to: (1) the interrelationship of the child with others; (2) the wishes of the child; (3) the custodial history of the child; (4) the child's need for a legally secure placement and whether such

a placement can be achieved without permanent custody; and (5) whether any of the factors in divisions (E) (7) to (11) apply.

{¶37} In this case, the trial court made its permanent custody findings pursuant to R.C. 2151.414(B) (1) (a). The trial court found that the evidence established that J.J.F. could not be placed with appellant-father within a reasonable period and should not be placed with him.

{¶38} The ongoing caseworker, Amy Craig, testified to her efforts in case planning and assisting the parents to comply with the case plan objectives. Appellant was to complete a parenting evaluation, an evaluation at Quest, comply with any treatment recommendation, obtain stable housing, and obtain stable employment. (T. at 8-9). Appellant did not successfully complete those programs. Appellant's own testimony indicated that he currently did not have stable housing and employment. (T. at 27). Appellant testified that the caseworker had supplied him with a bus pass early in the case and had attempted to provide him with a second bus pass that he had never picked up. (T. at 27). Appellant confirmed that he had not made it to his appointment for his parenting assessment that was scheduled the day before the hearing. (T. at 28). Appellant testified that he was just trying to survive himself at the time of the permanent custody hearing. (T. at 28).

{¶39} The Agency began working with the family in July of 2008. (T. at 5). The Agency attempted to work with this family for seven months before the motion for permanent custody was filed. During those seven months appellant did not complete one service on his case plan.

{¶40} The evidence demonstrates that any improvement the appellant-father has made in his life is tentative and, perhaps, temporary, and that he is at risk of relapse. The trial court found that, regardless of appellant's compliance with aspects his case plan, he was still not able to be a successful parent to his child.

{¶41} In the case of *In re: Summerfield*, Stark App. No. 2005CA00139, 2005-Ohio-5523, this court found where, despite marginal compliance with some aspects of the case plan, the exact problems that led to the initial removal remained in existence, a court does not err in finding the child cannot be placed with the parent within a reasonable time.

{¶42} Based upon the foregoing, the Court properly found the child could not or should not be returned to the appellant-father within a reasonable time. Despite offering numerous services, the appellant-father was unable to mitigate the concerns that led to the child's removal.

{¶43} C. Abandonment-R.C. 2151.414(B) (1) (b).

{¶44} R.C. 2151.011(C) states that, for purposes of R.C. Chapter 2151, "a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days."

{¶45} However, R.C. 2151.011(C) merely creates a presumption of abandonment, which a parent may rebut. See *In re Cornell,* Portage App. No.2003-P-0054, 2003-Ohio-5007, fn. 2; *In re Phillips,* Ashtabula App. No.2005-A-0020, 2005-Ohio-3774, ¶ 32. While the statute does not provide a definition," '[a]bandonment' of a child has been defined as any conduct on the part of the parent which evinces a settled

purpose to forego all parental duties and relinquish all parental claims to the child." *Baker v. Rose* (1970), 28 Ohio Misc. 200, 203, 270 N.E.2d 678, citing, *In re Masters* (1956), 165 Ohio St. 503, 505-506, 137 N.E.2d 752. See, also *In re C.E.,* Champaign App. No. 2005-CA-11, 2005-Ohio-5913 at ¶ 12.

{¶46} "A presumption effectively reverses the burden of coming forward with evidence to support a proposition of fact, causing the fact to be deemed established unless sufficient proof is presented to rebut the presumption. Once the presumption is rebutted, however, the presumption disappears. *Evans v. National Life & Acc. Ins. Co.* (1986), 22 Ohio St.3d 87, 488 N.E.2d 1247, first paragraph of syllabus. Whether sufficient proof has been presented to rebut, or "unseat," a legal presumption is an issue of law for the court. *Beresford v. Stanley* (1898), 6 Ohio N.P. 38, 9 Ohio Dec. 134, 1898 WL 763." *In re C.E.,* supra at ¶ 14.

{¶47} In the instant action, the trial court specifically found:

{¶48} "The Court finds that both parents have abandoned this child by virtue of their lack of contact with [the child] , their lack of bonding with [the child], their failure to support [the child], and their failure to attempt any form of reunification.

{¶49} "The Court finds that both parents have shown an inability to demonstrate a commitment toward this child by failing to regularly support, visit and, an unwillingness to provide adequate housing. They have abandoned this child by having a lack of contact for more than ninety days."

{¶50} April 28, 2009 Findings of Fact and Conclusions of Law.

{¶51} This Court has previously observed that, "situations may exist in which abandonment can be established without the passage of 90 days. However, before a

department initiates a motion for permanent custody on the grounds of *presumed* abandonment, we find 90 days must have passed without visit or contact before such motion can be initiated." *In re Scullion*, Stark App. No. 2006CA00308, 2007-Ohio-929 at ¶ 30. (Emphasis added). In the case at bar, the trial court appears to have based its finding of abandonment upon the 90-day presumptive rule.

{¶52} However, we find such error does not require reversal of the permanent custody determination under the two-issue rule. The trial court had an alternate, independent ground for terminating parental rights, finding the child cannot and/or should not be placed with appellant at this time or in the foreseeable future as he failed continuously and repeatedly to remedy the problems which caused the child to be removed from the home. *In re Williams*, Stark App. No. 2006CA00270, 2007-Ohio-1137 at 32; *In re Scullion*, supra at ¶ 31.

{¶53} D. The Best Interest of the Child

{¶54} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must 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; and (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.

{¶55} The focus of the "best interest" determination is upon the child, not the parent, as R.C. 2151.414(C) specifically prohibits the court from considering the effect a grant of permanent custody would have upon the parents. *In re: Awkal* (1994), 95 Ohio App.3d 309, 315. A finding that it is in the best interest of a child to terminate the parental rights of one parent is not dependent upon the court making a similar finding with respect to the other parent. The trial court would necessarily make a separate determination concerning the best interest of the child with respect to the rights of the mother and the rights of the father.

{¶56} In the case at bar, the trial court could not consider the wishes of the child due to the child's age. The trial court made findings of fact regarding the child's best interest. It is well-established that "[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *In re Mauzy Children* (Nov. 13, 2000), Stark App.No. 2000CA00244, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316, 642 N.E.2d 424.

{¶57} As an appellate court, we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (February 10, 1982), Stark App. No. CA-5758. "A fundamental premise of our criminal trial system is that 'the *jury* is the lie detector.' *United States v. Barnard,* 490 F.2d 907, 912 (C.A.9 1973) (emphasis added), cert. denied, 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974). Determining the weight and credibility of witness

testimony, therefore, has long been held to be the 'part of every case [that] belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men.' *Aetna Life Ins. Co. v. Ward,* 140 U.S. 76, 88, 11 S.Ct. 720, 724-725, 35 L.Ed. 371 (1891)". *United States v. Scheffer* (1997), 523 U.S. 303, 313, 118 S.Ct. 1261, 1266-1267. Reviewing courts should accord deference to the trial court's decision because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections that cannot be conveyed to us through the written record, *Miller v. Miller* (1988), 37 Ohio St. 3d 71.

{¶58} During the best interest portion of the permanent custody trial, the caseworker testified that the child was nine months old and had been in the custody of the SCDJFS and in the same foster home since July of 2008. (T. at 30). She testified that the child has pulmonary stenosis and has had open-heart surgery. (T. at 31). She stated that the child's current foster mother has been addressing all of the child's medical needs. (T. at 31). She stated that the child is on target developmentally. (T. at 32). She stated that she has observed the interaction between the foster mother and the child and there is a strong bond between them. (T. at 31). She also testified that the foster mother has expressed a desire to adopt the child if the permanent custody motion was granted. Id. Ms. Craig testified that appellant had not visited with the child since November of 2008 and the child has no bond with the Appellant at this time. (T. at 31-32). She also stated that appellant had not contacted her requesting a visit with the child since November of 2008 and had not attended any of the child's medical appointments or procedures. (T. at 37).

{¶59} At the end of the trial, the guardian ad litem for the child, Dave Zona, was asked to supplement his report if needed. Mr. Zona stated that permanent custody was in the best interest of the child. (T. at 41-42).

{¶60} Based on the evidence submitted at trial, the court properly determined the best interest of the child would be served by the grant of permanent custody to SCDJFS.

III. Conclusion

{¶61} For these reasons, we find that the trial court's determination that appellant-father had failed to remedy the issues that caused the initial removal and therefore the child could not be placed with him within a reasonable time or should not be placed with him, was not against the manifest weight or sufficiency of the evidence. We further find that the trial court's decision that permanent custody to Stark County Department of Job and Family Services was in the child's best interest was not against the manifest weight or sufficiency of the evidence.

{¶62} Appellant's first, second and third assignments of error are overruled.

{¶63} The judgment of the Stark County Court of Common Pleas, Juvenile Division is affirmed.

By: Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE

WSG:clw 0828

[Cite as *In re J.J.F*, 2009-Ohio-4736.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF: J.J.F., MINOR CHILD	:	
	:	JUDGMENT ENTRY
	:	CASE NO. 2009-CA-00133

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

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE