

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In re S.W., J.T.

Court of Appeals No. L-12-1073

Trial Court No. JC 10205319

DECISION AND JUDGMENT

Decided: August 10, 2012

* * * * *

Adam H. Houser, for appellant.

Jill E. Wolff, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the March 29, 2012 judgment of the Lucas County Court of Common Pleas, Juvenile Division, which terminated the parental rights of appellant, A.W., the mother of S.W. and J.T., and awarded permanent custody of her two children, S.W. and J.T. to appellee, Lucas County Children Services. Upon consideration of the assignments of error, we affirm the decision of the lower court. A.W. asserts the following single assignment of error on appeal:

The Appellant Received Ineffective Assistance of Counsel at the
Trial Level.

{¶ 2} A complaint in dependency and neglect was filed on May 26, 2010, by Lucas County Child Services against A.W. The trial court adjudicated the children neglected and the children were placed with a relative. A case plan was initiated for A.W. and required that she receive diagnostic services and later mental health and drug and alcohol treatment. She was removed from these programs for non-compliance. After A.W. failed to follow through on offered services, the agency sought permanent custody of the children. Following a hearing the court awarded the agency permanent custody on March 19, 2012. A.W. brought this appeal.

{¶ 3} On appeal, A.W. asserts that her trial counsel rendered ineffective assistance. A.W. wanted to testify at the hearing to explain why she needed inpatient treatment and also the extent to which she and her children were bonded. She asserts that her counsel failed to cross-examine the agency's mental health witnesses, did not present any witnesses on her behalf as to what she had attempted to do or why she needed additional time, and did not allow A.W. to testify. Therefore, she asserts that her attorney provided her with a minimal defense, which resulted in the termination of her parental rights.

{¶ 4} R.C. 2151.352 and Juv.R. 4 provide parents with a right to counsel in juvenile court proceedings under R.C. Chapter 2152. Appellate courts have also held such parents may raise claims of ineffective assistance of counsel on appeal. *Jones v.*

Lucas Cty. Children Services Bd., 46 Ohio App.3d 85, 86-87, 546 N.E.2d 471 (6th Dist.1988). The criminal standard is used to determine the issue. *Id.* To establish a claim of ineffective assistance of appointed counsel, the parent must show that his counsel's representation "fell below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *See also State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999). A properly licensed attorney is presumed to have acted in a competent manner. Therefore, the burden is on the parent to prove otherwise. *State v. Lott*, 51 Ohio St.3d 160, 174-175, 555 N.E.2d 293 (1990). Generally, when the action of counsel amounts to a trial tactic, it cannot later be used in a challenge that the trial counsel rendered ineffective assistance of counsel. *Strickland* at 689 and *State v. Griffie*, 74 Ohio St.3d 332, 658 N.E.2d 764 (1996). An exception is made to this rule only where the action is "such a deviation from the norm that ordinary trial counsel would scoff at hearing of it, * * *." *State v. Burgins*, 44 Ohio App.3d 158, 542 N.E.2d 707 (4th Dist.1988).

{¶ 5} In this case, A.W. has failed to demonstrate that her attorney's actions were any more than acceptable trial strategy. Her attorney did not cross-examine the medical expert witnesses who testified about A.W.'s diagnostic mental health assessment and her drug and alcohol therapy nor the guardian ad litem appointed to the case. A.W. has not demonstrated that cross-examination would have revealed any facts that would benefit A.W.'s case. Further, the determination of whether a party should testify is always a

strategic decision and, without additional facts, we must assume that the attorney determined that it was best if A.W. did not testify. A.W.'s attorney presented to the court in his closing argument A.W.'s desire to parent her children and her need for additional time to obtain the necessary treatment she needed. Therefore, we find A.W.'s sole assignment of error not well-taken.

{¶ 6} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
