

[Cite as *In re S.C.*, 2015-Ohio-2410.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 102350**

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**IN RE: S.C.  
A Minor Child**

[Appeal By J.R., Mother]

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD 12918472

**BEFORE:** E.T. Gallagher, J., Kilbane, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** June 18, 2015

**ATTORNEY FOR APPELLANT**

Jeffrey Froude  
P.O. Box 771112  
Lakewood, Ohio 44107

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

BY: Timothy D. Smanik  
Assistant Prosecuting Attorney  
Cuyahoga County Division of  
Children and Family Services  
3955 Euclid Avenue, Room 305E  
Cleveland, Ohio 44115

**Also Listed**

**Attorney for S.C.**

Britta M. Barthol  
P.O. Box 218  
Northfield, Ohio 44067

**Guardian Ad Litem**

Charles Feuer  
405 Longspur Road  
Highland Heights, Ohio 44143

EILEEN T. GALLAGHER, J.:

{¶1} Appellant-Mother, J.R. (“Mother”), appeals an order of the Cuyahoga County Common Pleas Court, Juvenile Division, that placed her child, S.C., in the permanent custody of appellee, Cuyahoga County Division of Children and Family Services (“CCDCFS”). For the reasons that follow, we affirm.

### **I. Factual and Procedural History**

{¶2} On November 1, 2012, the minor child, S.C., born on October 30, 2012, was removed from Mother’s custody pursuant to an ex-parte telephonic order. A complaint for temporary custody was then filed by the CCDCFS alleging the child to be neglected and dependant.<sup>1</sup> CCDCFS further filed a motion seeking predispositional temporary custody of the child, which was granted the same day.

{¶3} On January 22, 2013, Mother and Father stipulated to an amended complaint, including the following findings:

1. Mother has developmental delays. Despite receiving instruction from hospital staff, the mother was unable to understand instructions on how to feed her child.
2. Mother has five other children, none of whom are in her care or custody due to issues of neglect. One child is reported to reside in Florida; one is reported to reside in New York. One child is in the care of the maternal grandmother. Two children were adjudicated and committed to the legal custody of the paternal grandmother. See case no. 08189109, Lucas County Court of Common Pleas, Juvenile Division. Lucas County, Ohio.
3. Alleged Father has three other children, none of whom are in his care and custody. One child is in the care of the maternal grandmother. Two children were adjudicated and committed to the legal custody of the paternal grandmother. See case no. 08189109, Lucas County Court of Common Pleas, Juvenile Division. Lucas County, Ohio.

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<sup>1</sup> The agency’s complaint was filed against Mother as well as the child’s Father. Father has filed a separate appeal in *In re S.C.*, 8th Dist. Cuyahoga No. 102349.

4. Alleged Father has a criminal history including a conviction for attempted felonious assault.
5. Alleged Father has an anger management problem and is willing to work services.
6. Alleged Father has a history of substance abuse and is in need of an assessment.
7. Alleged Father has failed to establish paternity.
8. The parents lack stable housing due to issues with the landlord.
9. Alleged Father, John Doe, has failed to establish paternity and has failed to support, visit, or communicate with the child since birth.

{¶4} Based on the parents' stipulations, the magistrate issued a decision adjudicating S.C. dependent and committing her to the temporary custody of CCDCFS. The magistrate's decision was adopted in its entirety by the trial court on February 6, 2013.

{¶5} Following the removal of S.C., CCDCFS developed a case plan to facilitate the permanency goal of reunification with Mother and Father. Mother's case plan focused on her receiving substance abuse treatment, obtaining housing and emotional stability, attending parenting and anger management classes, and participating in a program for domestic violence victims. Father's case plan focused on his receiving counseling for domestic violence and substance abuse, completing parenting and anger management classes, and obtaining stable housing, employment, and emotional stability.

{¶6} On September 6, 2013, CCDCFS filed a motion to modify temporary custody to permanent custody pursuant to Juv.R. 19 and R.C. 2151.413. Following numerous pretrial hearings, Father filed a motion requesting legal custody be granted to the child's maternal grandmother ("grandmother"), a resident of Florida. On November 13, 2014, counsel for Father filed a motion requesting the trial court to allow grandmother, to

“appear and testify electronically during the trial “due to her inability to travel to Ohio.”

The trial court granted Father’s motion but clarified on the record that it would not bifurcate or continue that portion of the hearing if the parties were unable to connect electronically with grandmother.

{¶7} At trial, Monique Comiskey testified that she is an ongoing social worker with CCDCFS and was assigned to S.C.’s case on November 19, 2012. Comiskey testified that S.C. came into the custody of the agency when she was discharged from MetroHealth Hospital on November 2, 2012, three days after her birth. S.C. came into custody because there were “concerns with Mother’s cognitive and speech delays, the fact that her five other children had been previously removed from her care,” and “concerns about her not knowing the names of her other children or how to feed S.C.”

{¶8} Comiskey testified that when S.C. was placed in the emergency care of the agency, a permanency plan of reunification was implemented for Mother. Mother’s case plan required her to complete random urine screens, obtain emotional stability and stable housing, and attend parenting, anger management, and domestic violence classes.

{¶9} Comiskey testified that during Mother’s visitations with the child, Mother frequently became angry and verbally aggressive. Furthermore, Comiskey testified that despite Mother’s completion of parenting classes, she continued to have difficulties understanding the child’s basic needs and was unable to implement basic parenting strategies discussed during her classes.

{¶10} Additionally, Comiskey stated that Mother failed to take the necessary steps to obtain emotional stability and has not changed her behavior since the child was removed from her care. Comiskey testified that as part of her case plan, Mother

completed a psychological evaluation that recommended she be tested for anti-psychotic medication to determine whether she suffered from a psychotic disorder. However, Comiskey testified that Mother “failed to follow up with counseling to determine whether she needed to be on medication.”

{¶11} Next, Comiskey testified that Mother failed to satisfy the anger management requirements of her case plan. Comiskey stated that throughout her involvement in this case, Mother routinely displayed aggressive and hostile behavior during supervised visits and meetings. Comiskey discussed one particular incident where Mother became increasingly agitated when Comiskey addressed Mother’s poor hygiene during a supervised visit with S.C. According to Comiskey, Mother’s anger escalated and security was called into the visitation room to remove the child due to concerns for her safety. Following this incident, Mother’s case plan was amended to terminate future visitations.

{¶12} Finally, Comiskey testified that based on her observations of Mother and her consultations with professionals, Mother did not benefit from her domestic violence classes even though she attended all the classes and completed the program.

{¶13} With respect to the potential placement of the child with her grandmother in Florida, Comiskey testified that CCDCFS completed an “out-of-town investigation” and approved her as an adequate relative for placement. However, after the approval was made, grandmother was enmeshed in a domestic violence altercation involving alcohol that caused CCDCFS to reconsider its position on grandmother as a suitable relative for placement of the child. Grandmother was asked to complete a substance abuse assessment but stated she was unable to complete the assessment “due to finances.”

Based on her failure to complete the requested substance abuse assessment and remaining issues surrounding the unresolved domestic violence, Comiskey opined that placement with grandmother was not in the child's best interests.

{¶14} Based on the foregoing observations and interactions with the parties, Comiskey testified that she did not believe Mother and Father benefitted from the services offered in the finalized permanency plan and failed to remedy the condition that led to S.C.'s removal. Accordingly, Comiskey opined that Mother and Father could not provide S.C. with a safe and permanent home and recommended that the child be committed to the permanent custody of CCDCFS. Comiskey testified that S.C. developed a strong bond with her foster parents who have expressed their desire to adopt S.C.

{¶15} Finally, Dr. Robert Kurtz of the Cuyahoga County Juvenile Court Diagnostic Clinic testified that he completed a psychological evaluation of Mother and Father. With respect to Mother, Dr. Kurtz stated that she has an IQ of 78 and below average reading comprehension skills. Dr. Kurtz explained that individuals with similar assessment results "tend to have family conflicts and experience poor family functioning." Finally, Dr. Kurtz testified that he had the opportunity to observe the parents' interact with S.C. Although Mother and Father "were trying to be very affectionate to the child," "the child did not seem to be bonded to them."

{¶16} Thereafter, Mother and Father attempted to present the testimony of the child's grandmother. However, when it came time for grandmother to testify, Mother and Father were unable to connect with her on Skype. Counsel requested a continuance to fix the technical issues and ensure grandmother's testimony was heard by the court.

The court granted the parties a brief recess; however, when the parties were unable to reach grandmother electronically, the court denied the requested continuance, stating, “[a]fter numerous attempts to reach the grandmother in Florida, it’s my decision to go forward without her testimony.”

{¶17} After hearing all the evidence, the guardian ad litem for the child, Charles E. Feuer (“Feuer”), orally recommended permanent custody to CCDCFs, consistent with his previously filed report, was in child’s best interest. Feuer noted that Mother has not visited the child since September 25, 2013, and that the child is thriving under the care of her foster parents.

{¶18} At the conclusion of the permanent custody proceedings, the trial court found that, notwithstanding reasonable case planning and diligent efforts by CCDCFs to assist the parents, Mother failed to remedy the conditions that caused the child to be removed from her home and, therefore, permanent custody is in the child’s best interests. By journal entry dated December 10, 2014, the court terminated Mother and Father’s parental rights, and committed the child to the permanent custody of the agency. The trial court further denied grandmother’s motion for legal custody “as Mother and Father failed to show by the required proof that maternal grandmother can provide for the child’s basic and special needs.”

{¶19} Mother now appeals from the trial court’s December 10, 2014 judgment.

## **II. Law and Analysis**

{¶20} In her sole assignment of error, Mother argues the trial court denied her due process of law by (1) failing to facilitate the technology necessary for grandmother to testify remotely, and (2) denying her motion for continuance so that the video link could



be fixed. Mother contends that without grandmother's testimony, the trial court's judgment was "against the manifest weight of the evidence."

{¶21} Within this assignment of error, Mother first argues that once the trial court granted her motion to permit grandmother to testify remotely, it bore the burden of facilitating the procedure and technology necessary for the witness to testify at trial. We find no merit to Mother's position.

{¶22} In this case, the court's order permitting grandmother to testify remotely via Skype indicates that the trial court considered the relevant factors and concluded that the procedure was necessary and appropriate under the circumstances of this case. However, Mother has failed to cite any case law or rule of civil procedure that requires the trial court to take responsibility for facilitating the technology necessary for transmitting a witness's remote testimony. Moreover, as acknowledged by Mother, the inability to connect electronically with grandmother was unrelated to the technology available in the courtroom. In other words, the delays were not due to malfunctioning court equipment. Instead, the problems stemmed from Mother and Father's failure to test the Skype connection prior to trial and grandmother's inability to log into her Skype account. Accordingly, we find no due process violations.

{¶23} Next, mother contends the trial court abused its discretion by failing to grant her motion for continuance. "The grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. [Therefore, an] appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion."

*State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981), citing *Unger v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964); *State v. Bayless*, 48 Ohio St.2d

73, 101, 357 N.E.2d 1035 (1976). An abuse of discretion “‘implies that the court’s attitude is unreasonable, arbitrary or unconscionable.’” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

{¶24} After careful review of the record in its entirety, we cannot say the trial court abused its discretion by denying the motion for continuance. Mother’s motion requesting the court to permit remote testimony stated that grandmother “is able to testify electronically with regard to all issues.” Mother and Father made no request to the court to provide specialized equipment or assistance in setting up the devices needed to transmit grandmother’s testimony. As noted by the trial court, Mother and Father had approximately one week to take all steps necessary to ensure that the required technology was in place and working before trial. Under these circumstances, the inability to connect with grandmother electronically derived solely from Mother and Father’s own inaction. Accordingly, the trial court acted within its discretion in proceeding with the trial without grandmother’s testimony.

{¶25} Finally, we find no merit to Mother’s contention that the trial court’s judgment was “against the manifest weight of the evidence.” “An appellate court will not reverse a juvenile court’s termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.” *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 48, citing *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 24. “‘Clear and convincing evidence’ is evidence that ‘will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.’” *In re T.B.*, 8th Dist. Cuyahoga No. 99931,

2014-Ohio-2051, ¶ 28, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

{¶26} R.C. 2151.414 provides guidelines a trial court must follow in deciding a motion for permanent custody. The statute sets forth a two-prong analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B). First, it authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that any of these four factors apply (a) the child is not abandoned or orphaned, but the child cannot be placed with either parent 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; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a)-(d).

{¶27} In the event that R.C. 2151.414(B)(1)(a) applies, and the child is not abandoned or orphaned, but the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parents, a trial court must consider the factors outlined in R.C. 2151.414(E). *In re R.M.*, 8th Dist. Cuyahoga Nos. 98065 and 98066, 2012-Ohio-4290, ¶ 14. The presence of only one factor will support the court's finding that the child cannot be reunified with the parent within a reasonable time. *Id.* The relevant factors in this case include:

(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.

(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.

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody.

(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.

\* \* \*

(11) 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, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

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(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.

{¶28} If any of the factors outlined in R.C. 2151.414(B)(1)(a)-(d) exist, the trial court proceeds

to the second part of the analysis: whether, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency.

{¶29} R.C. 2151.414(D)(1) requires that in determining the best interest of the child, the court must consider all relevant factors, including, but not limited to (a) 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; (b) the wishes of the child as expressed directly by the child or through the child’s guardian ad litem; (c) the custodial history of the child; (d) 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; and (e) whether any factors in R.C. 2151.414(E)(7) through (11) are applicable.

{¶30} “There is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000), citing *In re Shaeffer Children*, 85 Ohio App.3d 683, 621 N.E.2d 426 (3d Dist.1993).

{¶31} Our review of the record in this case shows that the trial court’s decision to award permanent custody of S.C. to the agency was supported by clear and convincing evidence.

{¶32} First, the parties do not dispute that S.C. has been in CCDCFS’s custody without interruption since November 1, 2012. Thus, the record fully supports the court’s determination that the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period. *See* R.C. 2151.141(B)(1)(d).

{¶33} Furthermore, the record supports the court’s finding that S.C. could not or

should not be placed in the custody of either parent pursuant to R.C. 2151.414(B)(1)(a). The testimony presented at trial demonstrated that notwithstanding reasonable case planning and diligent efforts by the agency to assist her, Mother failed to remedy the problems causing the child to be placed outside the home. *See* R.C. 2151.414(E)(1). Specifically, Comiskey testified that, although Mother completed the domestic violence and parenting portions of her case plan, she did not benefit from the programs. Additionally, Comiskey opined that Mother did not obtain emotional stability and failed to satisfy the anger management requirements of her case plan based on her ongoing aggressive and hostile behavior.

{¶34} Similarly, Comiskey's testimony supports the trial court's determination that Mother has had her parental rights terminated with respect to a sibling of the child, that Mother's cognitive ability makes her unable to provide an adequate home for the child and that Mother has neglected the child between the date of the original complaint and the date of the filing of the motion for permanent custody by failing to regularly visit, communicate, or support the child. *See* R.C. 2151.414(E)(2),(11), and (14).

{¶35} Turning to the second prong of the permanent custody analysis, we find there was clear and convincing evidence to support the trial court's determination that awarding permanent custody to CCDCFS was in the best interest of the children.

{¶36} Comiskey testified that S.C. has developed a strong bond with her foster parents and their family. Significantly, Comiskey expressed that the foster parents were willing to adopt S.C. pending the court's custody decision. R.C. 2151.414(D)(1)(a). Furthermore, Feuer recommended permanent custody to the agency based on S.C.'s strong bond and interaction with the foster parents, the improvement in her quality of life

since being placed in foster care, and the safe and appropriate residence provided by the foster parents. R.C. 2151.414(D)(1)(b). Finally, as discussed above, a legally secure permanent placement could not be achieved without a grant of permanent custody to the agency based on Mother and Father's failure to complete the objectives of their respective case plans. R.C. 2151.414(D)(1)(d).

{¶37} Based on the foregoing, the trial court did not err in its determinations granting permanent custody to CCDCFS, terminating Mother's parental rights, and denying grandmother's motion for custody. The judgment of the trial court is supported by clear and convincing evidence, and therefore, is not against the manifest weight of the evidence.

{¶38} Mother's sole assignment of error is overruled.

{¶39} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR