

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: M. O. and S. F.

C.A. No.       25312

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE Nos.    DN 09-07-552  
                  DN 09-07-554

DECISION AND JOURNAL ENTRY

Dated: October 20, 2010

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MOORE, Judge.

{¶1} Appellant, Teresa Gunnoe (“Mother”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that adjudicated her two minor children dependent and neglected children. This Court reverses and remands.

I.

{¶2} Mother is the natural mother of several sons, including the children at issue in this case, M.O., born December 12, 1993, and S.F., born May 29, 1997. Although another one of Mother’s sons was originally involved in this action in the trial court, his case was later dismissed and since that time he has reached the age of majority. The fathers of the children are not parties to this appeal.

{¶3} On July 6, 2009, Summit County Children Services Board (“CSB”) filed complaints, alleging that M.O. and S.F. were dependent and neglected children. The agency alleged that it had received referrals that the children lacked appropriate supervision and that

they were having parties and using drugs in the home, but the agency had been unable to substantiate those allegations. CSB also alleged that the home was in poor condition and that M.O. and S.F. had excessive absences from school during the prior school year.

{¶4} Following an adjudicatory hearing, the magistrate found that M.O. and S.F. were dependent and neglected children due to their excessive absences from school. Because CSB had failed to prove that Mother's other child had excessive school absences, he was not adjudicated neglected or dependent and his case was dismissed. Mother filed objections to the magistrate's decision as it pertained to M.O. and S.F., which the trial court overruled. The trial court adjudicated M.O. and S.F. dependent and neglected children based on their excessive school absences and the condition of their home. Mother appeals and raises two assignments of error.

## II.

### **ASSIGNMENT OF ERROR I**

"THE JUVENILE COURT COMMITTED REVERSIBLE ERROR WHEN IT OVERRULED MOTHER'S OBJECTION AND FOUND THAT THE SCHOOL RECORDS WERE ADMISSIBLE AND THAT THERE WAS CLEAR AND CONVINCING EVIDENCE TO SUBSTANTIATE TRUANCY."

### **ASSIGNMENT OF ERROR II**

"THE JUVENILE COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT THERE WAS CLEAR AND CONVINCING EVIDENCE OF [CSB'S] INABILITY TO INVESTIGATE CONCERNS, AND THAT M.O. AND S.F. ARE DEPENDENT AND NEGLECTED CHILDREN."

{¶5} Mother's first assignment of error is that the trial court erred in admitting the children's school attendance records. Her second assignment of error is that CBS failed to present clear and convincing evidence that M.O. and S.F. were neglected and dependent children. We will confine our review to Mother's second assignment of error because, even with

the school attendance records, CSB failed to present clear and convincing evidence that M.O. and S.F. were neglected and dependent children.

{¶6} M.O. and S.F. were adjudicated neglected under R.C. 2151.03(A)(2) and 2151.03(A)(3) and dependent under R.C. 2151.04(C). A “neglected child” is defined in R.C. 2151.03(A)(2) and (3) as any child:

“(2) Who lacks adequate parental care because of the faults or habits of the child’s parents, guardian, or custodian;

“(3) Whose parent[] \*\*\* neglects or refuses to provide proper or necessary \*\*\* education \*\*\* or other care necessary for the child’s health, morals, or well being[.]”

A finding of neglect under R.C. 2151.03 requires proof that Mother was “willfully at fault in \*\*\* neglecting the children or refusing to perform [her] parental duties.” *In re Bibb* (1980), 70 Ohio App.2d 117, 120 (construing a prior version of R.C. 2151.03, but the operative language has not changed in any substantive respect.)

{¶7} R.C. 2151.04(C) defines a dependent child as “any child \*\*\* [w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship[.]” This adjudication should concentrate on whether the children are receiving proper care and support and look to environmental elements that are adverse to the normal development of children. See *In re Bibb*, 70 Ohio App.2d at 120; *In re Burrell* (1979), 58 Ohio St.2d 37, 39. The focus is on whether parental care is *adequate*, not whether it is *ideal*. See R.C. 2151.011(B)(1). Conditions of the home that are adverse to the normal development of children typically involve extreme filth or health or safety hazards that are so severe that they require removal of the children from the home. See, e.g., *In re D.H.*, 9th Dist. No. 24879, 2010-Ohio-422, at ¶2; *In re J.A.*, 9th Dist. No. 24332, 2009-Ohio-589, at ¶2.

{¶8} An adjudication of dependency or neglect requires clear and convincing evidence. Juv.R. 29(E)(4). Clear and convincing evidence is that which will produce in the trier of fact “a firm belief or conviction as to the facts sought to be established.” *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶9} CSB presented evidence about the condition of Mother’s home through the testimony of the caseworker who was inside the home once and observed it one other time by looking through an open door. She testified that, during a visit that she had scheduled with Mother, Mother allowed her to observe the entire home. Without any further detail, the caseworker described the home as “dirty” with an “odor” about it, the couch was missing cushions, there were holes in the walls and a hole in a window pane on the front door, and there was trash in bags outside on the front porch. When asked to explain what she meant by “dirty,” the caseworker testified that the “house just in general was dirty.” She was not so concerned about the condition of the home that she felt the children should be removed, however. During another, unannounced visit while Mother was at work, the caseworker observed more trash and flies on the front porch. Mother’s adult son opened the door and the caseworker was able to observe the home from outside. She testified that she observed more holes in the walls and what she believed to be dog feces on the carpet. On cross-examination, however, she admitted that she was not sure that it was dog feces that she saw.

{¶10} The caseworker also expressed concern that S.F., then twelve years old, slept in a bedroom in the basement because there was no functioning light down to the basement and the bed in the basement had no linens on it. Because the caseworker gave no further explanation about light or the bed, there was no evidence to demonstrate whether these conditions were

temporary or ongoing. She did not explain whether the light was not working due to the inoperability of the light or simply because it needed a new light bulb.

{¶11} The absence of linens from S.F.'s bed may also have been temporary. There was no evidence that the child slept on a bare mattress on a regular basis, only that there were no linens on the bed at the time the caseworker observed it. She testified that all of the other beds in the house had linens on them and did not testify about whether she and Mother spoke about the absence of linens on S.F.'s bed. Moreover, it is unclear how the health or well-being of a twelve-year-old boy would be seriously impacted by sleeping on an unmade bed, absent evidence that the mattress was unsanitary. See *In re K.E.*, 9th Dist. No. 24571, 2009-Ohio-2672, at ¶38.

{¶12} CSB failed to establish that the condition of Mother's home was unsafe for the children or that it was so dirty that it posed a threat to their health or well-being. This was a home where Mother lived with four sons who ranged in age from twelve to nineteen. Coupled with the fact that Mother worked fulltime and went to school two evenings a week, it might be expected that the condition of the home would not be pristine. CSB's evidence about the condition of this home did not rise to the level of clear and convincing evidence that it was so adverse to the normal development of these children that it warranted intervention by the state.

{¶13} The trial court also found that the children's truancy was a basis to adjudicate them neglected and dependent. Assuming that the school attendance records were admissible, CSB presented evidence that, during the prior school year, M.O. had 21 unexcused absences from school and S.F. had 22 unexcused absences. CSB offered no evidence of any of the circumstances surrounding the school absences, including what the children were doing while not at school or whether Mother was aware at the time that they were not attending school. The

caseworker testified that she did not have the opportunity to discuss the children's school attendance with Mother. Based solely on the attendance records, the trial judge concluded that each child was a "chronic truant" as that term is defined in the Ohio Revised Code. R.C. 2152.02(D) defines a "chronic truant" as "any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend \*\*\* fifteen or more school days in a school year." See, also, R.C. 2151.011(B)(8).

{¶14} This Court found no legal authority to support the trial court's conclusion that, because the children were "chronic truants" they were also dependent and neglected. According to R.C. 2152.02(F)(5), "[a]ny child who is a chronic truant" is a "delinquent child," not a dependent or neglected one. Throughout R.C. Chapters 2151 and 2152, the term "chronic truant" is used exclusively in reference to an adjudication of "delinquency;" it is never used in connection with, or as a basis for, an adjudication of dependency or neglect. This Court likewise found no case law to support the trial court's conclusion that an adjudication of dependency or neglect can be based solely on the child's truancy. To uphold the trial court's adjudications would require us to expand the definitions of dependency and neglect without any legal authority to do so.

{¶15} Moreover, the legislature has evidenced its intent that the juvenile court will address truancy outside the dependency and neglect setting. Were we to construe the definitions of dependency and/or neglect to encompass mere truancy, we would potentially circumvent an entire statutory scheme that the legislature has put in place to address chronic truancy. Chapters 2151, 2152, and 3321 of the Ohio Revised Code provide the statutory framework for addressing the responsibilities of both parent and child for compulsory school attendance and chronic truancy. This comprehensive scheme sets forth specific procedures that must be followed before

finding a child a “chronic truant,” none of which appear to have been followed here. Truancy proceedings involve the parent, in addition to the child, based on proving allegations that the parent “has failed to cause the child’s attendance at school in violation of [R.C. 3321.38] and, in addition, the particular facts upon which that allegation is based.” See R.C. 2151.27(A)(2)(b). Ohio’s compulsory school attendance laws are set forth in an entire chapter of the Ohio Revised Code, R.C. Chapter 3321. Specific procedures are required for notifying students and parents about the potential consequences of school absences, prior to the time that the child’s attendance has reached the level of “chronic” truancy. See R.C. 3321.19(C); *State ex rel. Nagle v. Olin* (1980), 64 Ohio St.2d 341, 346. Moreover, the statutory framework expresses a clear preference for encouraging school attendance through intervention methods such as counseling, parental involvement programs, and mediation, rather than instituting legal proceedings or removing the child from the home. See R.C. 3321.191.

{¶16} Although poor school attendance may be one of the underlying facts in an adjudication of dependency or neglect, it is generally coupled with other problems in the home, such as deplorable living conditions, a lack of food, domestic violence, and/or drug abuse by the parents. See, e.g., *In re B.C.*, 9th Dist. Nos. 24308 and 24309, 2008-Ohio-6130, at ¶3; *In re Brown*, 7th Dist. No. 04 CO 59, 2005-Ohio-4374, at ¶3-5; *In re M.C.*, 8th Dist. Nos. 85054 and 85108, 2005-Ohio-1968, at ¶2; *In re Ross*, 11th Dist. No. 2003-G-2550, 2004-Ohio-3680, at ¶10. There was no such additional evidence presented in this case. Without some evidence that the children were in an unsuitable environment during their school absences or that Mother was “willfully” at fault in refusing to provide for her children’s educational needs, this evidence could not satisfy the definitions of dependency under R.C. 2151.04 or neglect under R.C. 2151.03. See *In re Bibb*, *supra*. The trial court did not have sufficient evidence before it to

adjudicate the children neglected or dependent. Mother's second assignment of error is sustained.

III.

{¶17} The second assignment of error is sustained and we decline to address the first assignment of error because it has been rendered moot. See App.R. 12(a)(1)(c). The judgment of the Summit County Court of Common Pleas, Juvenile Division, is reversed and remanded.

Judgment reversed and  
the cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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CARLA MOORE  
FOR THE COURT



DICKINSON, P. J.  
WHITMORE, J.  
CONCUR

APPEARANCES:

SHUBHRA N. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and, HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.