

STATE OF OHIO                    )  
  )ss:  
COUNTY OF LORAIN            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: F.R.  
      B.R.

C.A. No.       14CA010543

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE Nos.   13JC40410  
              13JC40411

DECISION AND JOURNAL ENTRY

Dated: May 18, 2015

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MOORE, Judge.

{¶1} Appellant, Brian R. (“Father”), appeals from a judgment of the Lorain County Court of Common Pleas, Juvenile Division, that adjudicated his two minor children neglected and dependent and placed them in the temporary custody of their paternal grandparents. This Court affirms.

II.

{¶2} Father is the natural father of F.R., born March 3, 2001, and B.R., born April 20, 2003. The children’s mother is not a party to this appeal.

{¶3} Lorain County Children Services (“LCCS”) first became involved with these children during the 2012-2013 school year because they had excessive unexcused absences from school, which had not been resolved through intervention by a court attendance officer. Investigation by LCCS revealed that the parents were experiencing serious financial and legal problems, and because they were unable to meet the basic needs of the children, the children had

been moving back and forth between the parents' home and the homes of the maternal and paternal grandparents.

{¶4} When the caseworker visited the parents' home in September 2013, the children were there. The parents told the caseworker that the paternal grandmother would be coming to get the children but she did not actually come until the caseworker insisted that they call her. Because the parents had no plan to coordinate the children's transition between caregivers, the children were not receiving consistent and appropriate supervision and care. Consequently, LCCS developed a safety plan through which the parents agreed that the children would reside with the paternal grandparents.

{¶5} After implementing the safety plan, LCCS learned that the parents' financial and legal problems had resulted from their addiction to heroin. Although the parents would initially deny that they used drugs, each later admitted to long-standing substance abuse problems, which at that time included daily heroin use. After learning about the parents' heroin addiction, LCCS filed complaints to allege that F.R. and B.R. were neglected and dependent children.

{¶6} Following a hearing, the trial court adjudicated F.R. and B.R. as neglected and dependent children. The trial court placed the children in the temporary custody of the paternal grandparents with protective supervision by LCCS. Father appeals and raises three assignments of error.

## I.

### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT'S DETERMINATION THAT THE CHILDREN WERE NEGLECTED AND DEPENDENT IS NOT SUPPORTED BY COMPETENT CREDIBLE EVIDENCE, AS THE CHILDREN WERE NOT NEGLECTED AND DEPENDENT AT THE TIME OF FILING THE COMPLAINT AND THE PARENTS HAD VOLUNTARILY PLACED THEM WITH GRANDPARENTS.

{¶7} Father's first assignment of error is that the trial court's adjudication of his children as neglected and dependent was not supported by clear and convincing evidence. Although Father's argument under this assigned error includes other alleged errors in the trial court's adjudication, this Court will not reach the merits of those issues because he did not separately assign them as error. *In re T.A.*, 9th Dist. Lorain Nos. 13CA010439, 13CA010445, 2013-Ohio-5646, ¶ 11, citing App.R. 12(A)(1)(b) and App.R. 12(A)(2).

{¶8} Father does not dispute that, at the time LCCS filed complaints in this case, the caseworker believed that he and Mother were addicted to heroin. Although the parents initially denied their drug problems, both later admitted to the caseworker that they were heroin addicts, that their daily heroin habits had caused them to suffer serious financial and legal problems, and that they were unable to meet the basic needs of their children.

{¶9} Despite the parents' admitted failure to personally meet the basic daily needs of their children, Father asserts that, at the time LCCS filed its complaints in October 2013, they had voluntarily placed the children in the care of the paternal grandparents, where they were receiving proper care. The Ohio Supreme Court has recognized that "a child who is receiving proper care pursuant to an arrangement initiated by the parent with a caregiver is not a dependent child[.]" *In re Riddle*, 79 Ohio St.3d 259, 263 (1997). When a child is receiving adequate care through such an arrangement with a relative, he is likewise not neglected because "the care furnished by the relative is imputed to the parents." *Id.* Emphasizing the intrusiveness of state intervention into the parent-child relationship, the Court reasoned that "the state should intervene only when necessary" to protect the child. *Id.*

{¶10} The suitability of non-parent caregivers will be imputed to the parents, however, only when "the parent *voluntarily* arranged for the child to be placed with a relative[.]" prior to

any intervention by a children services agency. (Emphasis in original.) *Id.* In *Riddle*, as in this case, the parents did not “voluntarily” place their child(ren) in a suitable home because they did not arrange for a substitute caregiver until the county children services agency had intervened and coordinated the placement. *Id.* The Supreme Court refused to impute the suitability of the relative to the parents because the placement had not been initiated by the parents but was the result of state intervention.

[I]t was through the caseworker’s initiative that [T.R.] was placed with relatives to provide stability in the child’s care. It was the caseworker who mediated the “contract” which set out the terms of the initial placement with [the grandparents]. No credit can be imputed to [the father] for the paternal grandparents’ provision of proper care in this situation.

*Id.*

{¶11} The facts of this case cannot be legally distinguished from those of *In re Riddle*. The parents in this case placed F.R. and B.R. under the ongoing supervision of the paternal grandparents only after LCCS arranged for the placement and persuaded them to agree to that placement as part of the safety plan.

{¶12} Although Father testified that the children were already residing in the care of the paternal grandmother when LCCS became involved, the trial court heard considerable evidence to contradict that testimony. At the time LCCS intervened and established the safety plan, the children were drifting back and forth between their own home and those of each set of grandparents. Although the paternal and maternal grandparents may have been providing suitable care when the children were with them, there was no established plan or coordination between the parents and the grandparents to ensure that the children were consistently receiving suitable care and attending school on a regular basis.

{¶13} Prior to implementing the safety plan, the caseworker came to the parents' home and found the children there, with a suitcase sitting on the front porch. The children had apparently returned from the home of the maternal grandparents and were planning to go to the home of the paternal grandparents. It was unclear to the caseworker at that time, however, whether any adult had assumed responsibility for their care and supervision at that specific time. It was not until the caseworker insisted that the paternal grandmother be called that she came to the home to get the children.

{¶14} The evidence before the trial court demonstrated that, prior to the intervention by LCCS, Father's children were not receiving ongoing supervision and care through either or both sets of grandparents. Consequently, Father has failed to demonstrate on appeal that the trial court's adjudications of neglect and dependency were not supported by the evidence presented at the hearing. Father's first assignment of error is overruled.

#### **ASSIGNMENT OF ERROR II**

THE TRIAL COURT ERRED IN ADMITTING TESTIMONY OF A CASEWORKER CONCERNING WHAT THE MINOR CHILD REPORTED TO HER WITH REGARD TO WITNESSING PARENTAL DRUG USE.

#### **ASSIGNMENT OF ERROR III**

THE TRIAL COURT ERRED IN ALLOWING THE ADMISSION OF TESTIMONY CONCERNING DRUG SCREENS THAT CONTAINED HEARSAY AND WERE NOT PROPERLY AUTHENTICATED AS A BUSINESS RECORD.

{¶15} These assignments of error will be addressed together because they are closely related. Father objected at the hearing and argues again on appeal that the trial court should not have admitted hearsay evidence about the parents' drug use. To demonstrate reversible error, however, Father must demonstrate not only that the trial court committed error but also that he suffered prejudice as a result. *See Lowry v. Lowry*, 48 Ohio App.3d 184, 190 (4th Dist.1988),

citing *Gries Sports Ents., Inc. v. Cleveland Browns Football Co., Inc.*, 26 Ohio St.3d 15, 28 (1986).

{¶16} Even if the trial court erred in admitting certain evidence about the parents' drug use, Father has failed to demonstrate that he suffered any prejudice because overwhelming other evidence about the parents' drug use was already before the court through properly-admitted evidence. *See State v. Gaines*, 1st Dist. Hamilton Nos. C-040122, C-040139, 2005-Ohio-3032, ¶ 26. Both parents admitted to the caseworker that they had struggled with substance abuse for several years and, at the time LCCS intervened in their lives, each was addicted to heroin. Through his own testimony, Father admitted that he had a daily heroin habit and that, as a result, he had no money to provide for the basic needs of his children. That properly-admitted evidence, standing alone, was more than sufficient to support the trial court's adjudication of the children. Father's second and third assignments of error are overruled.

### III.

{¶17} Father's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

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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 Lorain, 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(C). 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 Appellant.

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CARLA MOORE  
FOR THE COURT

CARR, P. J.  
WHITMORE, J.  
CONCUR.

APPEARANCES:

KATHLEEN M. AMERKHANIAN, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and FAYE LIST, Assistant Prosecuting Attorney, for Appellee.