

awarding permanent custody of Appellant September Hiner's four minor children to CSSB pursuant to R.C. 2151.414. Hiner presents three assignments of error on appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 2} "THE TRIAL COURT'S DECISION SHOULD BE OVERRULED SINCE THE JUVENILE COURT DID NOT HAVE JURISDICTION TO PROCEED WITH THE DISPOSITIONAL HEARING ON JULY 19, 2006 BEYOND THE NINETY DAY PERIOD OF THE COMPLAINT'S FILING DATE AS EXPRESSLY REQUIRED BY OHIO REVISED CODE SECTION 2151.35 AND JUVENILE RULE 34."

{¶ 3} The time limit to which Hiner refers and the section of the Revised Code and the Rule of Juvenile Procedure in which that time limit is imposed apply generally to proceedings on complaints alleging delinquency, abuse, or neglect of a child. Proceedings on motions filed subsequently pursuant to R.C. 2151.413 by a public agency seeking permanent custody of a child are instead governed by R.C. 2151.414. Division (A)(1) of that section provides that "[t]he court shall conduct a hearing in accordance with section 2151.35 of the Revised Code." However, R.C. 2151.414(A)(2) more specifically provides, in pertinent part:

{¶ 4} "The court shall hold the hearing scheduled pursuant to division (A)(1) of this section not later than one hundred

twenty days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the one-hundred-twenty-day deadline. The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than two hundred days after the agency files the motion.

{¶ 5} "* * *

{¶ 6} "The failure of the court to comply with the time periods set forth in division (A) (2) of this section does not affect the authority of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court."

{¶ 7} CSSB filed its motion for permanent custody on January 26, 2006. A hearing on the motion was set for April 17, 2006, but was continued until July 19, 2006, to accommodate appointment of new counsel for Appellant Hiner. Following a hearing, the magistrate entered a decision granting CSSB's motion on November 3, 2006. On July 5, 2007, the Juvenile Court overruled Hiner's objections and adopted the magistrate's decision.

{¶ 8} The hearing commenced one hundred and seventy-four

days after CSSB's motion was filed, and the court granted the motion more than a year after that motion was filed. Continuance of the hearing appears to have been for good cause. The court's final judgment was outside the time limits set by R.C. 2151.414(A)(2), but per that section, the failure did not deprive the court of jurisdiction to decide the motion, which is the particular error Appellant assigns.

{¶ 9} Article IV, Section 4(B) of the Ohio Constitution confers on the General Assembly authority to determine the jurisdiction of the court of common pleas and its divisions. Per R.C. 2151.07, the Juvenile Court is a division of the court of common pleas and its jurisdiction is conferred in Chapters 2151 and 2152 of the Revised Code. In enacting R.C. 2151.414(A)(2), the General Assembly expressly disclaimed any intention to condition the jurisdiction otherwise conferred on the court on the time limits that section imposes. Those time limits are, therefore, merely directive, and absent an abuse of discretion in failing to comply with them, no error is demonstrated. On this record, no abuse of discretion is shown, and none is claimed.

{¶ 10} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 11} "THE TRIAL COURT'S DECISION OF GRANTING PERMANENT

CUSTODY TO CHILDREN SERVICES SHOULD BE OVERRULED BECAUSE THE CASE PLAN WAS DEFECTIVE AS BEING IN VIOLATION OF THE OHIO REVISED CODE.”

{¶ 12} Appellant Hiner argues that the Juvenile Court erred when it granted the motions for permanent custody CSSB filed, absent a case plan for adoption that R.C. 2151.413(E) requires an agency to file with a motion for permanent custody. We agree.

{¶ 13} R.C. 2151.412(A)(2) provides that an agency that files a complaint alleging that a child is abused, neglected, or dependent, and/or which is providing services for a child, must prepare and maintain a case plan for the child. R.C. 2151.42(D) contemplates agreement of the child’s parents with the plan, or, if no agreement is reached, for the agency to present evidence on the contents of its case plan for the court’s approval at the dispositional hearing on the complaint. That section further provides: “The court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.”

{¶ 14} R.C. 2151.412(F)(1) states:

{¶ 15} “All case plans for children in temporary custody

shall have the following general goals:

{¶ 16} "(a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close proximity to the home from which the child was removed or the home in which the child will be permanently placed;

{¶ 17} "(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home." (Emphasis supplied).

{¶ 18} R.C. 2151.413 governs motions for permanent custody. Division (E) of that section states:

{¶ 19} "Any agency that files a motion for permanent custody under this section shall include in the case plan of the child who is the subject of the motion, a specific plan of the agency's actions to seek an adoptive family for the child and to prepare the child for adoption."

{¶ 20} Appellant Hiner argues that the Juvenile Court erred when it granted CSSB's motion for permanent custody absent a case plan for adoption of the four children included with the motion for permanent custody that CSSB filed. CSSB responds that the case plan for adoption required by R.C. 2151.413(E) need not be filed until after the court grants the motion for

permanent custody. CSSB relies on decisions which have so held: *In re McCutchen* (Mar. 8, 1991), Knox App.No. 90-CA-25, and *In re Cavender* (Mar. 19, 2001), Madison App. No. CA2000-06-037.

{¶ 21} In *Cavender*, the Twelfth District Court of Appeals reasoned that requiring an agency to file an adoption plan before permanent custody is granted would undermine the goal of reunification set out in R.C. 2151.412(F)(1)(b). The Fifth District Court of Appeals agreed with that reasoning in *McCutchen*, and further observed that a case plan can be amended only by agreement of the parties, and that adoption is not a viable option until permanent custody is granted.

{¶ 22} The Eleventh District Court of appeals cited *Cavender and McCutchen* for authority in *In re Gordon*, Trumbull App. No. 2002-T-0073, 2002-Ohio-4959, in which that court held: "An agency is not required to set forth an exact plan of adoption until permanent custody is granted. A case plan outlining the ultimate goal of adoption and the agency's treatment actions to prepare the child for the adoption process is in accord with the requirements of R.C. 2151.413(E)." *Id*, at ¶44.

{¶ 23} We cited the holding in *Gordon* in *In re Muldrew*, Montgomery App. No. 19469, 2002-Ohio-7288, holding that the

trial court abused its discretion when it denied a motion for permanent custody on a finding that a planned permanent living arrangement which the court ordered was a better option.

{¶ 24} The reunification goal identified in R.C. 2151.412(F)(1) expressly applies to case plans concerning children who are in the temporary custody of a public agency.

In that circumstance, the agreement of the child's parent contemplated by R.C. 2151.412(D) functions to procure the parents' commitment to the case plan for reunification the agency proposes.

{¶ 25} Motions for permanent custody are instead governed by R.C. 2151.413. The motion is filed while temporary custody is in effect, but by its nature, a motion for permanent custody necessarily rejects reunification as a goal. Further, parental agreement with permanent custody is neither expected nor sought.

{¶ 26} Any inconsistency between a case plan for adoption and the goals and purposes of a temporary custody case plan is resolved by the express legislative mandate of R.C. 2151.413(E), which provides that the agency "shall include" a case plan for adoption with its motion for permanent custody.

In our view, the rationales of *McCutchen and Cavender* mistakenly conflated the elements and purposes of a temporary

custody case plan required by R.C. 2151.412 with the case plan for adoption required by R.C. 2151.413 when a motion for permanent custody is filed.

{¶ 27} The paramount issue for the court to determine in the hearing on the motion for permanent custody is whether "it is in the best interest of the child to grant permanent custody to the agency that filed the motion." R.C. 2151.414(A)1). The purpose of the case plan for adoption required by R.C. 2151.413(E) is to allow the court to consider the child's prospects for adoption if the motion is granted, which is a matter that directly relates to the best interest of the child at issue. It defies logic to allow the agency to defer filing the adoption case plan required by R.C. 2151.413(E) until after permanent custody is ordered. Therefore, we decline to apply the rule announced in *McCutchen, Cavender, and Gordon*. Further, to the extent that it relied on those precedents, our holding in *Muldrew* is overruled.

{¶ 28} CSSB did not file an adoption case plan mandated by R.C. 2151.413(E) when it filed its motion for permanent custody. When the trial court granted the motion, the court had no adoption case plan before it. Evidence relevant to adoptability to which CSSB refers in its brief that the court

heard was tangential, at best. Therefore, the Juvenile Court erred when it granted the motion that CSSB filed.

{¶ 29} The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

{¶ 30} "THE TRIAL COURT'S DECISION OF GRANTING PERMANENT CUSTODY TO CHILDREN SERVICES SHOULD BE OVERRULED AS BEING AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 31} Following hearings conducted pursuant to R.C. 2151.414, the magistrate found, with respect to each of the four children, that placing the child in the permanent custody of CSSB is in the child's best interest, R.C. 2151.414(A)(1), and that the child cannot be placed with either Appellant Hiner or the child's father within a reasonable time. R.C. 2151.414(B)(2). The magistrate then granted permanent custody of the four children to CSSB. The Juvenile Court entered an interim order adopting the magistrate's decision.

{¶ 32} Appellant filed objections and supplemental objections to the magistrate's decision. Appellant argued that the magistrate's decision that the children could not be placed with her within a reasonable time was against the manifest weight of the evidence, contending that she had substantially complied with her case plan for reunification.

{¶ 33} Appellant repeats her objection on appeal; indeed,

she repeats the text of her objection as her argument in support of the error she assigns.

{¶ 34} The Juvenile Court overruled the objections. The court found that, following a psychological assessment which diagnosed a bi-polar disorder, Appellant failed to take the medications she was prescribed or attend the necessary therapeutic counseling. Further, with respect to special health and psychological needs of one child, Appellant failed to attend the child's appointments and therapy. The court also found that Appellant was, at the time of the hearing, unable to maintain a "clean and free-of-health hazard environment" for the children, and that the conditions of her housing were "deplorable."

{¶ 35} In determining whether a child cannot be placed with a parent within a reasonable time, the court must consider whether, the agency's diligent efforts notwithstanding, "the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home." R.C. 2151.414(E)(1). In that connection, the court must consider the parent's failure to utilize medical, psychiatric, or therapeutic services made available to her. *Id.* The court must also consider whether chronic mental illness of the parent is so severe that the parent is "unable to provide an adequate home for the child," presently and within the following year. R.C. 2151.414(E)(2). The findings the trial court made involve those considerations. Appellant

argues that those findings are against the manifest weight of the evidence.

{¶ 36} "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, Syllabus by the Court. The "weight of the evidence" analysis was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387:

{¶ 37} "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.'" (Emphasis added.) *Black's, supra*, at 1594."

{¶ 38} The trial court's judgment cannot be reversed merely because it is contrary to some evidence. The judgment must be shown to be contrary to the obvious and gross probative value of all the admissible evidence that was before the trial court. That showing necessarily challenges the trial court's rationale for the judgment it reached. However, a reviewing court is not authorized to reverse a correct judgment because

of an erroneous rationale. *State ex rel. Gilmore v. Mitchell* (1999), 86 Ohio St.3d 302. The judgment must be sustained if there are any grounds to support it. *Thatcher v. Goodwill Industries of Akron* (1997), 117 Ohio App.3d 525.

{¶ 39} A “manifest weight” argument is not a method to obtain a second bite of the apple. The trial court’s findings of fact and the legal conclusions it reached enjoy a strong presumption of correctness. Thus, it is particularly necessary that parties who claim that a judgment is against the manifest weight of the evidence support that claim with “reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” App.R. 16(A)(7). “Broadbrush” attacks on the trial court’s rationale are insufficient.

{¶ 40} In her brief on appeal, Appellant merely references matters that could preponderate against the findings the court made. However, her contentions fail to demonstrate that the court’s judgment is against the manifest weight of the evidence because it is contrary to the obvious and gross probative value of all the admissible evidence that was before the Juvenile Court. Therefore, we must find, in accordance with the presumption of correctness, that the court’s findings are not against the manifest weight of the evidence.

{¶ 41} The third assignment of error is overruled.

Conclusion

{¶ 42} Having sustained the second assignment of error, we will reverse the judgment from which this appeal was taken and remand the case to the Juvenile Court for further proceedings.

WOLFF, P.J. And BROGAN, J., concur.

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