

[Cite as *In re D.L.*, 2009-Ohio-2476.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

D.L.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. CT2008-0061

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court  
of Common Pleas, Juvenile Division,  
Case No. 20730155

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

May 22, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Hoffman, P.J.*

{¶1} Appellant Donald Lightfoot, Jr. appeals the October 9, 2008 Judgment Entry of the Muskingum County Court of Common Pleas, Juvenile Division, granting legal custody of his minor son, D.L., to Appellees John and Carma Benson.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Donald Lightfoot, Jr. and Star Eubanks are the parents of D.L., born June 20, 2007. D.L. has special needs, including hearing loss and developmental delays.

{¶3} On September 14, 2007, Muskingum County Children's Services (hereinafter "MCCS") filed an abuse, neglect and dependency complaint in the Muskingum County Court of Common Pleas, Juvenile Division. The trial court granted temporary custody of D.L. to the MCCS, and the child was subsequently placed into foster care with John and Carma Benson.

{¶4} The trial court instituted a case plan for the parents, which was ultimately unsuccessful. On April 7, 2008, the parents entered an admission to dependency. Star Eubanks, the child's mother, recommended to MCCS her acquaintances, Richard and Tracy Klinehoffer, to supervise Star's visits with D.L.

{¶5} On July 1, 2008, MCCS filed a motion to modify temporary custody to legal custody of the minor child with Richard and Tracy Klinehoffer. The Klinehoffer's began supervising visits in July of 2008.

{¶6} On July 30, 2008, John and Carma Benson filed a motion for legal custody of D.L. D.L. remained with the Bensons in foster care during the pendency of these proceedings.

{¶7} On October 2, 2008, a MCCS caseworker testified at the hearing relative to legal custody it was “not looking like there was going to be a reunification due to Star’s inability to take care of the child and Donald’s inability to do anything also.” Following the October 2, 2008 hearing, the trial court awarded legal custody to the Bensons via Judgment Entry of October 9, 2008. Appellant filed a notice of appeal from the entry on November 7, 2008. The trial court subsequently issued findings of fact and conclusions of law on December 5, 2008

{¶8} Appellant Donald Lightfoot, Jr.<sup>1</sup> now appeals assigning as error:

{¶9} “I. THE TRIAL COURT ERRED IN AWARDING LEGAL CUSTODY OF A CHILD TO FOSTER PARENTS WITHOUT FINDING THAT REASONABLE EFFORTS HAD BEEN MADE BY THE PUBLIC CHILDREN SERVICES AGENCY TO PREVENT REMOVAL OR TO RETURN THE CHILD HOME AND ISSUING FINDINGS OF FACT TO THAT EFFECT.”

{¶10} As stated in the statement of facts and case supra, the trial court awarded legal custody to the Bensons via Judgment Entry of October 9, 2008. Appellant filed his notice of appeal from the October 9, 2008 Judgment Entry on November 7, 2008. The trial court did not issue its findings of fact and conclusions of law until December 5, 2008. As we are limited to review of the record as it existed on the date the final order was entered, we cannot now consider the trial court’s December 5, 2008 Findings of Fact and Conclusions of Law. *Martin v. Todt* (March 8, 1999), Stark App. No. 1998 CA00259.

{¶11} Ohio Revised Code Section 2151.419 states,

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<sup>1</sup> Richard and Tracy Klinehoffer did not appeal the decision of the trial court placing legal custody with the Bensons.

**{¶12}** “(A)(1) Except as provided in division (A)(2) of this section, at any hearing held pursuant to section 2151.28, division (E) of section 2151.31, or section 2151.314, 2151.33, or 2151.353 of the Revised Code at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court shall determine whether the public children services agency or private child placing agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts. If the agency removed the child from home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the court is not prohibited, solely because the agency did not make reasonable efforts during the emergency to prevent the removal of the child, from determining that the agency made those reasonable efforts. In determining whether reasonable efforts were made, the child's health and safety shall be paramount.

**{¶13}** “\*\*\*

**{¶14}** “(B)(1) A court that is required to make a determination as described in division (A)(1) or (2) of this section shall issue written findings of fact setting forth the reasons supporting its determination. If the court makes a written determination under division (A)(1) of this section, it shall briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did

not prevent the removal of the child from the child's home or enable the child to return safely home.”

{¶15} Upon review, the trial court’s October 9, 2008 Judgment Entry does not state findings with regard to “reasonable efforts” as required by the statute. Accordingly, we sustain Appellant’s sole assignment of error.

{¶16} The judgment of the trial court is reversed and the case remanded to that court to re-enter judgment.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ John W. Wise  
HON. JOHN W. WISE

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

