

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

IN THE MATTER OF:

KENNY SPARKS **CASE NO. 5-04-16**
ALLEGED NEGLECTED
DEPENDENT CHILD **OPINION**
[RACHELLE HAYES SPARKS
DEFENDANT-APPELLANT]

IN THE MATTER OF:

TIMOTHY SPARKS **CASE NO. 5-04-17**
ALLEGED NEGLECTED
DEPENDENT CHILD **OPINION**
[RACHELLE HAYES SPARKS
DEFENDANT-APPELLANT]

IN THE MATTER OF:

SHAWN SPARKS **CASE NO. 5-04-18**
ALLEGED NEGLECTED
DEPENDENT CHILD **OPINION**
[RACHELLE HAYES SPARKS
DEFENDANT-APPELLANT]

IN THE MATTER OF:

WILLIAM SPARKS, JR. **CASE NO. 5-04-19**
ALLEGED NEGLECTED
DEPENDENT CHILD **OPINION**
[RACHELLE HAYES SPARKS
DEFENDANT-APPELLANT]

**CHARACTER OF PROCEEDINGS: Civil Appeals from Common Pleas
Court, Juvenile Division**

JUDGMENT: Judgments Affirmed

DATE OF JUDGMENT ENTRIES: October 4, 2004

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SHAW, P.J.

{¶1} These consolidated appeals are from the March 12, 2004 judgment of the Court of Common Pleas, Juvenile Division, of Hancock County, Ohio, granting permanent custody of William, Jr., Shawn, Timothy, and Kenneth Sparks

to the Hancock County Children's Services Board and terminating all parental rights of their parents, Rachelle Hayes and William Sparks, Sr.

{¶2} The relevant facts in this case are as follows. The Hancock County Jobs and Family Services: Children's Protective Services Unit ("CPSU") first became involved with the Sparks children on May 13, 2002. CPSU received a report that on May 12, 2002 Timothy Sparks, then three years old, was admitted to the intensive care unit at Blanchard Valley Medical Center for an overdose of the anti-psychotic drug Zyprexa. The medication was proscribed for his four-year-old brother Shawn, who has been diagnosed with ADHD and ODD. Hospital personnel reported that Timothy swallowed ten Zyprexa pills, a fatal dose had the child not received immediate medical attention.

{¶3} After receiving this report, CPSU conducted an investigation with the cooperation of Rachelle Hayes and William Sparks, Sr. In the course of its investigation, CPSU obtained a history on the family from the Children's Protective Services Unit in Morgan County, Indiana where the family previously resided. That history included numerous reports of neglect; the children were left at home unsupervised, were found unsupervised outside and away from the home, and there was a previous incident involving a drug overdose. The record indicates that there were at least seven separate reports of failure to supervise or

abuse/neglect in Indiana. Law enforcement personnel noted on each of these occasions that the children had a “very dirty” appearance and had soiled diapers.

{¶4} The Hancock County CPSU also had prior involvements with Rachelle Hayes, the boys’ mother. On October 8, 1999 the Common Pleas Court of Hancock County, Juvenile Division, granted permanent custody of Richard Hayes, Rachelle’s son and the Sparks children’s half-brother, to CPSU.

{¶5} On June 20, 2002 CPSU received an order for protective supervision of William, Shawn, Timothy, and Kenneth. In addition, the court found in its July 30, 2002 journal entry that the four boys were neglected and dependent. Subsequent to those orders, there were four specific investigations conducted by CPSU, three of which resulted in substantiated reports of lack of supervision. Additionally, there were fifteen separate incidents that required trips to the emergency room.

{¶6} Thereafter, in January of 2003, CPSU filed for temporary custody of the boys. The court found that Mr. Sparks “has shown no initiative” in caring for the boys, that Rachelle Hayes had not been compliant and failed to take her medication, and that the situation failed to improve even after numerous services were provided including counseling, home-based therapy, and parenting education programs. The court awarded CPSU temporary custody, and the four boys were removed from the home and placed in foster care.

{¶7} On December 1, 2003 CPSU filed a motion for permanent custody. After hearing evidence presented by the parties, the court awarded CPSU permanent custody, thus terminating all parental rights of Rachelle and William, Sr. In doing so, the court found by clear and convincing evidence that the children had been in the temporary custody of one or more public children's services agencies or private placing agencies for twelve months of a consecutive twenty-two month period, that the children should not be placed with either parent within a reasonable time, and that it was in the best interests of the children to grant permanent custody to CPSU. The court considered that even with parental training and counseling Rachelle was unable to progress to unsupervised visits with the boys. In addition, the court found that William, Sr. failed to cooperate in the reunification process and that he had stated to the caseworker that he was not interested in maintaining his parenting rights. Moreover, the court found that Rachelle had previously had a child permanently removed and that her parental rights as to that child had been terminated. These appeals followed, and Rachelle, as the sole appellant, asserts one assignment of error.

The trial court erred to the prejudice of the Appellant in granting Permanent Custody to the Hancock County Children's Protective Service Unit because the Agency failed to prove their case by clear and convincing evidence.

{¶8} Our review of a grant of permanent custody begins by noting that “[i]t is well recognized that the right to raise a child is an ‘essential’ and ‘basic

civil right.’ ” *In re Hayes* (1997), 79 Ohio St.3d 46, 48, 679 N.E.2d 680, citing *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169. Thus, “a parent’s right to the custody of his or her child has been deemed ‘paramount’” when the parent is a suitable person. *In re Hayes, supra* (citations omitted); *In re Murray, supra*. Because a parent has a fundamental liberty interest in the custody of his or her child, this important legal right is “protected by law and, thus, comes within the purview of a ‘substantial right[.]’ ” *In re Murray, supra*. Based upon these principles, the Ohio Supreme Court has determined that a parent “must be afforded every procedural and substantive protection the law allows.” *In re Hayes, supra* (citations omitted). Thus, it is within these constructs that we now examine the assignment of error.

{¶9} The Revised Code requires that the trial court determine, by clear and convincing evidence, that a grant of permanent custody to the agency that has so moved is in the best interest of the child and that one of four enumerated factors applies. R.C. 2151.414(B)(1). Included in this list is that “[t]he child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period,” R.C. 2151.414(B)(1)(d), or that “[t]he child cannot be placed with either of the child’s parents within a reasonable time or should not be placed with the child’s parents.” R.C. 2151.414(B)(1)(a).

{¶10} The Supreme Court of Ohio has held that “clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate; being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and *unequivocal*.” *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118, citing *Merrick v. Ditzler* (1915), 91 Ohio St. 256, 110 N.E. 493. In addition, when “the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *Cross, supra* (citations omitted). Thus, we are required to determine whether the evidence was sufficient for the trial court to make its findings by a clear and convincing degree of proof.

{¶11} Here, the trial court found by clear and convincing evidence that both of the enumerated factors in R.C. 2151.414(B)(1)(a) and (d) applied. The record reflects that the children were adjudicated neglected and dependent pursuant to R.C. 2151.28 on June 20, 2002. The record also reflects that CPSU was granted temporary custody of the children and that they were removed from their parents’ home on January 30, 2003. The children remained in the custody of CPSU until the adjudicatory hearing on February 24, 2004. Thus, the trial court

properly found that the children had been in the custody of CPSU for twelve months prior to the grant of permanent custody.¹

{¶12} Moreover, our examination of the record reveals that the trial court had sufficient evidence before it to determine that the children could not be placed with either parent within a reasonable time. R.C. 2151.414(B)(1)(a). William Sparks, Sr., the boys' father, told social services workers that he was unable to care for the children. The father failed to follow the case plan in any meaningful way, did not attend court proceedings, and has not asserted his parental rights in any manner.

{¶13} Nor could the boys be placed with Rachelle within a reasonable time.² Rachelle's difficulties in supervising and handling the children appear to stem from a psychological condition. Thomas L. Hustak, a forensic psychologist, interviewed Rachelle and performed a parental assessment. He testified at the hearing about her difficult childhood, and her history of exposure to physical and sexual abuse while growing up. Rachelle has a long history of psychological treatment as well, and is currently on medication which is effectively treating her bouts of depression and is helping her deal with the stress in her life.

¹ In determining whether children's services has had custody of a child for twelve months of a consecutive twenty-two month period, the trial court is not required to deduct sixty days from the date the child was removed from the home if the child has been adjudicated pursuant to R.C. 2151.28. R.C. 2151.414(B)(1).

² Rachelle Hayes and William Sparks, Sr., have divorced since the removal of the boys, and no longer live together.

{¶14} Dr. Hustak noted that it is difficult to treat Rachelle because of her co-morbidity, meaning that she has multiple psychological difficulties that affect her ability to have a relationship with her children. Dr. Hustak testified that “she can blow up and get angry with little provocation because she just hasn’t learned the skills to be able to handle things.” He testified that this was a chronic problem for Rachelle, and that it would most likely continue for the rest of her life. He specifically noted that the situation would probably be the same six months down the road.

{¶15} Based upon all of this testimony, the court had sufficient evidence before it to find by clear and convincing evidence that the children could not be placed with either parent within a reasonable time. Even if the children had not been in the custody of children’s services for twelve months, this additional finding would be sufficient to meet the second requirement of R.C. 2151.414(B)(1).

{¶16} However, our evaluation does not end there. The trial court must also meet the first requirement of R.C. 2151.414(B)(1), and make a determination that permanent custody is in the best interests of the children. In making this determination, the court shall consider all relevant factors, including, but not limited to, the five factors listed in R.C. 2151.414(D):

- (1) **The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster, caregivers and**

- out-of-home providers, and any other person who may significantly affect the child;**
- (2) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;**
 - (3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period;**
 - (4) 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;**
 - (5) Whether any of the factors in division (E)(7) to (11) of this section apply in relation to the parents and child.**

Among the relevant factors in division (E)(7) to (11) is that “the parent has had parental rights involuntarily terminated . . . with respect to a sibling of the child.”

R.C. 2151.414(E)(11).

{¶17} In order to correct the problems in the Sparks home, both parents were provided numerous services designed to educate them on proper care and teach them the skills necessary to raise young children. Rachelle completed the Parent Project Junior Program, a parenting education class designed for parents of strong willed and out-of-control kids. She also received additional individualized help from Carol Taylor, the coordinator of the Parent Project. Rachelle also received home-based therapy services from the Family Resource Center, a program which provides intensive services for families where the children are in danger of being removed from the home. Although home-based therapy services

are typically time intensive and last for only eight weeks, services for Rachelle lasted twenty weeks. Finally, Rachelle worked with Rebecca Shumaker, a parent educator with Hancock Jobs and Family Services.

{¶18} As previously alluded to, the vast majority of Rachelle’s problems as a parent stem from her inability to establish an effective parenting relationship with her children. The record indicates that she consistently resorts to yelling, threatening, and roughly handling the children in order to get them to stop misbehaving. The parenting assessment Dr. Hustak performed on Rachelle indicated that she had difficulty with “child domain adaptability.” As he explained, this means that she sees children as having characteristics that are difficult to manage, and she would often overreact when she had trouble managing the children. Dr. Hustak also tested Rachelle on the Child Abuse Potential Inventory, and found that she shares characteristics of individuals whom research has shown have potential for child abuse. Based on these results, Dr. Hustak concluded that because of her history and her psychological conditions, she has difficulty “being able to handle herself, her relationships and her children.”

{¶19} One problem Rachelle faces is that she has unreasonable expectations of the boys. Experts testified that Rachelle expects too much of children at young ages and increasingly gets angry and frustrated when the children fail her. Rachelle indicated that she expected the children—all then under

the age of five—to be able to clean the house without supervision. She expected them to be able to bathe themselves unaided. Catherine Bouillon, the home-based therapist, testified that at one time prior to the children’s removal she arrived at the Sparks home and found the two youngest boys, two and one at the time, alone in the bath tub. Rachelle also told caseworkers that she spent a lot of time in the mornings yelling at the kids because they were moving too slowly and not getting dressed fast enough, even though some of the boys were two and three years old and could not be expected to be able to dress themselves.

{¶20} Apart from the impossible expectations and her failure to supervise the children, Rachelle did not provide any structure to the boys’ lives. One caseworker testified that the parents would often not put the boys to bed, instead letting the boys fall asleep anywhere in the house. This was further evident in her inability or unwillingness to provide any structure in her visitations with the boys. She rarely came prepared with any activities for the boys, although repeatedly told that her time with the boys could be much more meaningful and productive had she simply given them something to do. Instead, the boys turned rowdy and disruptive, at which point Rachelle would lose all control. Then, a caseworker would enter the room, turn the boys’ attention to one activity, and they would calm down in a matter of minutes. Although repeatedly presented with these effective parenting techniques both by the caseworkers and in the parenting skills classes,

Rachelle was rarely able to implement them into her own visitations with the boys. Even when she was able to, she failed to do so consistently over time.

{¶21} However, the primary concern CPSU had was Rachelle’s inability to control the children without resorting to physicality. Although there were no indications of physical abuse, Rachelle would always resort to physically restraining the boys, harshly grabbing them and pulling them around. She was unable to get them to listen to her, whereas the boys were always very attentive and obedient with the foster parents and the caseworkers. One incident involved her physically laying on top of Shawn in order to get him to be still when he was in a “time out.” The caseworker had to go into the room and tell her not to lie on the child—this after a year or more of parenting education and parenting skills classes. Rachelle knew what appropriate means of restraining the children were, yet she was unable to implement them.

{¶22} The record indicates that Rachelle’s ability to care for the boys had not shown substantial improvement during the time that CPSU had temporary custody of the children; she had not been able to progress even to unsupervised visitation with the boys. Her desire to be reunified with her children is apparent, and she has gone to great lengths to follow the caseplan and become a better parent. However, numerous individuals testified before the trial court that Rachelle has shown no sustained improvement in her parenting skills. Those

individuals who worked with Rachelle, including a home-therapist, individuals from parenting skills and parenting education classes, and caseworkers who worked with her at visitations, all testified that Rachelle was unable to consistently implement proper parenting techniques, and continuously resorted to yelling and threatening the children.

{¶23} In short, although provided with numerous services designed to educate her on proper care for her children, Rachelle was unable to develop any significant, sustainable progress in caring for these boys. Catherine Bouillon, the home based therapist, worked with Rachelle for twenty weeks, more the twice the normal length of her program, and still closed the case unsuccessfully. She believed that no further progress would be made, and that the minimal progress that was made would not last. She testified before the lower court, “my primary concern was that over a long period of time, that the improvements that we made couldn’t be sustained independently. There needed to be a lot of supervision and direction I don’t feel I made a great deal of progress.” The parent educator and the staff at the Parent Project reported similar conclusions as well. Each indicated that Rachelle was unable to implement the skills she learned, and feared that she would be unable to sustain any progress. Rachelle was still on the once a week, supervised visitation schedule, and she was unable to progress beyond that to unsupervised visitation.

{¶24} In contrast, the Guardian ad Litem’s report indicates that the children are “thriving in their current foster home.” Mark Olthouse, the CPSU caseworker involved with the Sparks children, testified that their behavior in the foster home is remarkably different. There is less negative behavior and more obedience. The boys have responded better in a stable environment. A representative from the foster care agency testified at the hearing that their behavior and manner has improved over time in foster care.

{¶25} Given the evidence before the court, Rachelle’s long history of neglecting and failing to supervise her children, her inability to sustain any progress or growth in her parenting abilities, and the father’s unwillingness to raise the children, the trial court had sufficient evidence to find that it is in the best interests of the children to grant permanent custody to CPSU. There was sufficient evidence for the trial court to make its findings by a clear and convincing degree of proof. The assignment of error is overruled, and the judgments of the trial court are affirmed.

Judgments Affirmed.

CUPP and BRYANT, J.J., concur.

/jlr