

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
GEAUGA COUNTY, OHIO**

IN THE MATTER OF:	:	<b>OPINION</b>
S.B., D.B., J.B., AND R.B., ABUSED, NEGLECTED AND DEPENDENT CHILDREN	:	<b>CASE NO. 2011-G-3005</b>

Civil Appeal from the Geauga County Court of Common Pleas, Juvenile Division, Case No. 09 JF 000647.

Judgment: Affirmed.

*Sean C. Buchanan*, Buchanan Legal, P.O. Box 1443, Kent, OH 44240 (For Appellant-Reginald Birks).

*David P. Joyce*, Geauga County Prosecutor, and *Craig A. Swenson*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Appellee-Geauga County Department of Job and Family Services).

*Deborah Hoffman*, 470 Center Street, Building 6-C, Chardon, OH 44024 (Court Appointed Special Advocate).

*Eileen Noon Miller*, Law Offices of Carolyn J. Paschke Co., L.P.A., 10808 Kinsman Road, P.O. Box 141, Newbury, OH 44065 (Counsel for Minor Children).

MARY JANE TRAPP, J.

{¶1} Appellant, Reginald Birks, appeals from the January 4, 2011 judgment entry of the Geauga County Court of Common Pleas, Juvenile Division, which terminated his parental rights and granted permanent custody of his four children to appellee, Geauga County Department of Job and Family Services (“GCDJFS”). At issue is whether the juvenile court erred by finding that Mr. Birks could not provide a

legally secure, permanent placement for his children and whether it erred by admitting alleged hearsay testimony that he was involved with the criminal justice system in Canada. For the reasons that follow, we affirm.

{¶2} **Procedural History**

{¶3} GCDJFS was granted emergency temporary custody of Mr. Birks' four children: S.B., d.o.b. 02/09/99; D.B., d.o.b. 10/01/00; J.B., d.o.b. 04/17/02; and R.B., d.o.b. 04/13/03. GCDJFS filed a complaint alleging that the minor children were abused, neglected, and dependent. The juvenile court held a hearing at which the mother of the minor children, Jamie Gammel, entered a plea of "true." However, Mr. Birks did not attend the hearing. The juvenile court ordered the minor children to remain in the temporary custody of GCDJFS and appointed Deborah Hoffman as court appointed special advocate/guardian ad litem ("GAL"). Attorney Eileen Noon Miller was later appointed as counsel for the minor children.

{¶4} Mr. Birks subsequently appeared in court and entered a plea of "true" to the complaint. The juvenile court found the minor children to be abused, neglected, and dependent, and a case plan was adopted. GCDJFS continued to exercise temporary custody over the minor children and both Mr. Birks and Ms. Gammel were granted supervised visitation.

{¶5} The GAL filed a report, noting that the minor children had all been placed in a single foster home where they were receiving good care in a structured, nurturing

environment. She recommended that the minor children remain in the temporary custody of GCDJFS.<sup>1</sup>

{¶6} The parties returned to court for a dispositional hearing. The juvenile court noted a significant number of ongoing concerns with regard to Mr. Birks, including his chronic unemployment; inadequate housing; driver's license suspension for non-payment of support; lack of financial and emotional support for the minor children; and his decision to have another child by another woman despite his inability to support the children he fathered with Ms. Gammel.

{¶7} The juvenile court held a review hearing. Ms. Gammel attended the hearing, however, Mr. Birks failed to appear. The juvenile court determined that Mr. Birks had made no effort to participate in the case plan, had not maintained contact with GCDJFS, and only participated in two supervised visits with the minor children. As a result of his noncompliance, the juvenile court terminated Mr. Birks' visitation with the minor children.

{¶8} Neither Ms. Gammel nor Mr. Birks appeared for the annual review hearing. Upon review the court found Mr. Birks had had no contact with the case worker despite her attempts to contact him and had made no inquiry about the welfare of the minor children. The court found no evidence that he was making any effort to comply with the goals of the case plan. Moreover, the minor children expressed hurt and anger that he was not making an effort to visit them leading the court to find that he had abandoned the minor children.

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1. Throughout the proceedings, the GAL filed additional reports each recommending that the minor children remain in the temporary custody of GCDJFS. In her final report, the GAL recommended that permanent custody of the minor children should be granted to GCDJFS.

{¶9} Thereafter, GCDJFS filed a motion for permanent custody.

{¶10} Mr. Birks later turned himself in on a bench warrant that was issued for a failure to appear at a child support pretrial. Mr. Birks acknowledged he was in contempt of court. He was ordered to pay a fine plus costs associated with the citation. A final review hearing was scheduled. However, Mr. Birks failed to attend and the juvenile court continued to note his complete lack of compliance with the case plan.

{¶11} Mr. Birks subsequently filed a motion for custody, and the matter proceeded to a permanent custody hearing. GCDJFS presented nine witnesses offering the results of their investigation, detailing their placement efforts, and evidence regarding the parents' compliance with the case plan. Mr. Birks testified on his own behalf and presented one additional witness regarding the love he has for his children and his desire to be granted custody. Ms. Gammel testified on her own behalf with respect to her issues as well as her concerns regarding Mr. Birks' ability to care for the minor children.

**{¶12} Evidence Presented from Home Studies and Observations During Parental Visits**

{¶13} Dawn Bates, kinship navigator with GCDJFS, testified that she was involved in the placement process of the minor children after they were initially removed from their mother's care. After conducting home studies with various extended family members, Ms. Bates concluded that no relatives provided viable options.

{¶14} With respect to Mr. Birks' home study, Ms. Bates stated that he was living with his girlfriend, Jennifer Hodgkinson, who was interested in helping him with his children, but she was concerned about Mr. Birks' commitment to the minor children due to the fact that he had no contact with the case worker or his children in two review

periods. She was concerned about the stability of Mr. Birks' home and the minor children being placed there.

{¶15} Ms. Bates questioned Mr. Birks' honesty. Specifically she referenced two instances that raised concern. The first was an assault case against Mr. Birks in Canada about which Ms. Hodgkinson was completely unaware. Secondly, Ms. Bates asked Mr. Birks about his wife in Canada but he claimed he was divorced.

{¶16} Ms. Hodgkinson testified that she and Mr. Birks have been together for the past year and a half and lived together for part of that time in a four bedroom home. She said that she and Mr. Birks share one bedroom, her daughter has one, her son has another, and one is empty. Ms. Hodgkinson stated she would take in all four of Mr. Birks' children if the court awarded him custody. She indicated that Mr. Birks loves his children and wants to be with them.

{¶17} Ellen Warner, a social worker with GCDJFS, testified that she supervised about 10 visits between Ms. Gammel and the minor children. Although Ms. Gammel was usually late for the meetings, they generally went well. On cross-examination, Ms. Warner said that the one supervised visit with Mr. Birks and the minor children also went well and that, for the most part, they seemed to be bonded with their father. Ms. Warner later stated that she did not supervise more visits with Mr. Birks because he was difficult to contact.

{¶18} Susan Manning, a social worker with GCDJFS, testified that the minor children initially missed their parents but were adjusting well with their foster placement, and were very bonded to their foster mother. She indicated Mr. Birks had not complied

with the case plan as he failed to complete a mental health assessment and he drove the minor children even though his driver's license had been suspended.

{¶19} She provided additional social history including the fact that Mr. Birks had more children with other women, he was unemployed, and he lived with his brother in Shaker Heights. When she asked Mr. Birks about the assault charges regarding his wife or possibly ex-wife in Canada, he told her the charges had been dropped. After the annual review hearing, Ms. Manning had no contacts from Mr. Birks.

{¶20} Mr. Birks testified that he has always had a great relationship with his children. He said he had some difficulties with visitation since he lived in Shaker Heights for awhile and his driver's license was suspended. Mr. Birks confirmed that after he moved in with Ms. Hodgkinson he never contacted GCDJFS to inquire about the minor children and never provided anyone with his new address. He said he did not comply with the case plan because he failed to complete a mental health evaluation which he could not afford. He did not inquire or realize that it could have been subsidized.

{¶21} Mr. Birks believes he has an adequate place to bring the minor children and, with the help of his girlfriend, would be able to meet their financial needs despite the fact that it has been well over a year since he last held a full-time job.

{¶22} Regarding his marital status and child support issues, he testified that he was "almost" divorced and was still married at the time of the permanent custody hearing to a woman in Canada. He had been going back and forth to Canada since 2005. His driver's license is under suspension for failure to pay child support because he had not been working.

{¶23} The juvenile court also heard testimony from Bernadette Charles, a diagnosis therapist with Ravenwood Mental Health Center, and David Hanlon, residential treatment manager at Lake/Geauga Recovery Centers, regarding Ms. Gammel's issues.

**{¶24} The Children's Progress in Foster Care**

{¶25} Amy Casline, case manager at Specialized Alternatives for Families and Youth, testified that the minor children appeared to be close as siblings and that the oldest child tended to be bossy. Ms. Casline noted the minor children argued a lot among themselves. She opined that the minor children had a "long road" ahead of them.

{¶26} Sandra Turpin, the minor children's therapeutic foster parent, testified she is employed as a para-educator with Canton City Schools, and teaches at the same school building where the minor children attend. She believed they deserve a chance for consistency in their lives. Ms. Turpin said the minor children initially exhibited signs of anger, "fighting for everything, time, space, food", which have improved a lot. Her expectations are for them to learn how to be children and how to have "fun instead of taking responsibility for each other." She stated she has developed a bond with them and believes they have developed a bond with her as well. She has established a "very structured lifestyle" for the children with positive reinforcements for good behavior to help them slowly develop trust. Ms. Turpin is committed to a long-term placement for all the children. On cross-examination, Ms. Turpin believed the minor children loved Mr. Birks but that they are not bonded with him.

{¶27} According to the GAL, she has seen positive changes in the minor children with regard to their foster placement, basing her recommendation primarily on the lack of consistency in the children's lives before the foster home placement. Before the placement, the children had different homes, at least four different schools in the year before the placement, and constantly shifting rules. Now they have a stable situation and the GAL recommended granting permanent custody of the minor children to GCDJFS.

**{¶28} The Children's Mother**

{¶29} Lastly, Ms. Gammel testified that she lives with her mother and grandmother. She stated that she and Mr. Birks never married but were together for about seven years. She has desperately tried to work on her sobriety and was previously on the verge of suicide. Ms. Gammel said she had a good relationship with all her children. She indicated she has worked the past seven years doing relaxation therapy. On cross-examination, Ms. Gammel said that when she and Mr. Birks were together, he was a good father. However, when asked if she believed Mr. Birks would be able to care for the minor children, she said she was worried about his financial abilities and transportation issues.

{¶30} Following the hearing, the juvenile court denied Mr. Birks' motion for custody and granted GCDJFS's motion for permanent custody. It is from that judgment that Mr. Birks filed a timely appeal, asserting the following two assignments of error for our review:



{¶31} “[1.] The trial court erred in finding against the manifest weight of the evidence that Reginald Birks could not provide a legally secure permanent placement for his children.

{¶32} “[2.] The trial court erred in admitting an undocumented hearsay allegation that Reginald Birks had involvement with the criminal justice system in Canada.”

**{¶33} Two-Prong Permanent Custody Analysis**

{¶34} This court stated in *In re N.T.*, 11th Dist. No. 2010-A-0053, 2011-Ohio-650, at ¶51-62:

{¶35} “R.C. 2151.414 sets forth the guidelines to be followed by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B) outlines a two-prong analysis. It authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that it is in the best interests of the child to grant permanent custody to the agency, *and* that any of the four factors apply:

{¶36} “(a) The child is not abandoned or orphaned, has not 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, (\*\*\*) and the 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.

{¶37} “(b) The child is abandoned.

{¶38} “(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶39} “(d) 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 (\*\*\*)’

{¶40} “This two-prong analysis required by R.C. 2151.414(B) has been summarized by our court as follows:

{¶41} “(\*\*\*) R.C. 2151.414(B) establishes a two-pronged analysis that the juvenile court must apply when ruling on a motion for permanent custody. In practice, the juvenile court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶42} “\*\*\*

{¶43} “Assuming the juvenile court ascertains that one of the four circumstances listed in R.C. 2151.414(B)(1)(a) through (d) is present, then the court proceeds to an analysis of the child’s best interest. In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates that the juvenile court must consider all relevant factors, including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster parents 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; and (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.

{¶44} “The juvenile court may terminate the rights of a natural parent and grant permanent custody of the child to the moving party only if it determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency that filed the motion, and that one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present.’ *In re Krems*, 11th Dist. No. 2003-G-2535, 2004-Ohio-2449, ¶32-36. See, also, *In re T.B.*, 11th Dist. No. 2008-L-055, 2008-Ohio-4415, ¶35.

{¶45} “Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.’ *Krems* at ¶36, citing *In re Holcomb* (1985), 18 Ohio St.3d 361, 368, \*\*\*.

{¶46} “An appellate court will not reverse a juvenile court’s termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.’ *Krems* at ¶36, citing *In re Jacobs* (Aug. 25, 2000), 11th Dist. No. 99-G-2231, 2000 Ohio App. LEXIS 3859, \*8.” (Parallel citation omitted.)

**{¶47} Findings Supported by Clear and Convincing Evidence**

{¶48} Addressing the first prong of the analysis, the juvenile court determined, after a hearing, that two of the four factors delineated in R.C. 2151.414(B)(1) were present, namely that Mr. Birks has abandoned the minor children, and that they have been in the temporary custody of GCDJFS for 12 or more months of a consecutive 22 month period. R.C. 2151.414(B)(1)(b) and (d).

{¶49} Although Mr. Birks does not specifically present a best interest of the children argument to this court, our review of the record establishes that the juvenile court fully considered and satisfied the second prong of the analysis as well.

{¶50} Regarding the second prong, or the “best interest” test, the juvenile court considered all of the factors in R.C. 2151.414(D) and made the following findings: (1) Mr. Birks has shown a lack of commitment toward the minor children and has not demonstrated a reciprocal bond with them. The minor children are bonded with their foster parent; (2) two of the minor children expressed a desire to live with their parents and two expressed a desire to be adopted; (3) the minor children have been in the temporary custody of GCDJFS since November 23, 2009; and (4) the minor children’s need for a legally secure permanent placement can only be achieved by granting permanent custody to GCDJFS.

{¶51} There was ample testimony supporting these findings. This was the second time that the minor children were removed from Mr. Birks’ care and placed in a foster home. He failed to complete the mental health assessment required under the case plan; he failed to respond to the case workers’ efforts to engage him in the case plan; and he failed to notify the court or case workers of changes in his address.

{¶52} Most compelling to the trial court and to us is evidence of Mr. Birks’ lack of commitment toward the minor children demonstrated by his failure to regularly support, visit, or communicate with them, when able to do so. Although the children were excited to see their father, we agree with the trial court’s finding that Mr. Birks “has not demonstrated a reciprocal bond with the children.” Moreover, the evidence also supports the finding that after visits were terminated because of his failure to participate

in visits and his failure to participate in the case plan, “he did not take steps to re-establish contact and maintain a relationship with the children.”

{¶53} Evidence also supports the trial court’s findings regarding the children’s need for a legally secure permanent placement and alternatives other than a grant of permanent custody to GCDJFS. Firstly, Mr. Birks failed to timely complete the process necessary for a home study and efforts to locate a kinship placement were unavailing. Secondly, although we cannot say that unemployment in and of itself should be a controlling consideration, it must be considered in context with other factors and that is precisely what the trial court did.

{¶54} Mr. Birks’ unemployment and his reliance on his girlfriend to provide for his own basic needs including food, shelter, and transportation was considered in the context of the larger social setting of his household. The trial court found if the minor children were to be placed with Mr. Birks, he would rely on assistance from his girlfriend and this reliance could prove problematic since at the time of the permanent custody hearing, Mr. Birks’ girlfriend was unaware that he was still married to a woman in Canada. Thus the court questioned the stability of that relationship.

{¶55} These considerations taken with the finding that Mr. Birks has abandoned his children pursuant to R.C. 2151.011(C) and has not taken meaningful steps to secure placement of the children in his care supported the trial court’s conclusion that he cannot provide a legally secure permanent placement for the minor children. This is further supported by the fact that the GAL recommended granting permanent custody to GCDJFS.

{¶56} We find the record establishes that the juvenile court’s decision to grant permanent custody to GCDJFS is supported by clear and convincing evidence.

{¶57} We now turn to Mr. Birks’ assignments of error.

{¶58} In his first assignment of error, Mr. Birks argues that the juvenile court’s finding that he could not provide a legally secure, permanent placement for the minor children is against the manifest weight of the evidence.

**{¶59} Manifest Weight of the Evidence**

{¶60} This court stated in *In re J.S.E., J.V.E.*, , 11th Dist. Nos. 2009-P-0091 and 2009-P-0094, 2010-Ohio-2412, at ¶38:

{¶61} “The standard of review for weight of the evidence issues, even where the burden of proof is “clear and convincing,” retains its focus upon the existence of some competent, credible evidence. In other words, when reviewing awards of permanent custody to public children services agencies, judgments supported by some competent, credible evidence must be affirmed. If the record shows some competent, credible evidence supporting the trial court’s grant of permanent custody to the county, \*\*\* we must affirm that court’s decision, regardless of the weight we might have chosen to put on the evidence.’ *Id.*, quoting *In re Kangas*, 11th Dist. No. 2006-A-0084, 2007-Ohio-1921, at ¶85. ‘Every reasonable presumption must be made in favor of the judgment and the findings of fact of the juvenile court.’ *Id.*, quoting *In re Kangas* at ¶86, citing *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19, \*\*\*.” (Parallel citation omitted.)

{¶62} It is important to note that consideration of a legally secure, permanent placement for the minor children is just one of the R.C. 2151.414(D)(1) best interest factors that the court must consider; this one factor alone is not determinative. The

testimony from the permanent custody hearing establishes that the minor children have been in the temporary custody of GCDJFS since November 23, 2009 and this was the second time the children were removed from Mr. Birks' care and placed in a foster home. When these facts are taken in combination with the other competent, credible evidence regarding the legally secured permanent placement detailed earlier and we follow the instruction that every reasonable presumption must be made in favor of the judgment and the findings of fact of the juvenile court, we are compelled to find that Mr. Birks could not provide a legally secure, permanent placement for the minor children. Thus, the juvenile court's decision is not against the manifest weight of the evidence.

{¶63} Mr. Birks' first assignment of error is without merit.

{¶64} In his second assignment of error, Mr. Birks contends that the juvenile court erred in admitting an undocumented hearsay allegation that he had involvement with the criminal justice system in Canada.

**{¶65} Plain Error**

{¶66} Initially, we note that Mr. Birks failed to object to the alleged "objectionable" hearsay evidence with regard to his involvement with the criminal justice system in Canada. "It is a general rule that an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." *In re Miller*, 11th Dist. No. 2006-A-0046, 2007-Ohio-2170, at ¶28, quoting *State v. Childs* (1968), 14 Ohio St.2d 56, paragraph three of the syllabus. Accordingly, we will consider this assignment of error under a plain error standard of review.

{¶67} “In explaining the meaning of ‘plain error’ in civil context, the Ohio Supreme Court has stated, ‘reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings.’” *In re Miller*, supra, at ¶29, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121.

**{¶68} Hearsay Testimony**

{¶69} Evid.R. 801(C) defines hearsay as “\*\*\* a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

{¶70} This court recently stated in *In re K.R.*, 11th Dist. No. 2010-T-0050, 2011-Ohio-1454, at ¶75:

{¶71} “It is well-settled that hearsay is not permitted in adversarial juvenile court proceedings. *Adorante v. Wright*, 7th Dist. No. 98-BA-56, \*\*\* 2001 Ohio App. LEXIS 1206, \*14; *In re Brofford* (1992), 83 Ohio App.3d 869, 873, \*\*\*; *In re Barzak* (1985), 24 Ohio App.3d 180, 184, \*\*\*. However, the judge is presumed to be able to disregard improper testimony. *In re Sims* (1983), 13 Ohio App.3d 37, 41, \*\*\*. The admission of hearsay in an adversarial juvenile court proceeding in which parents may lose custody of a child is not prejudicial unless it is shown that such evidence was relied on by the judge in making his decision. *Adorante*, supra, at \*14-\*15, citing *In re Vickers Children* (1983), 14 Ohio App.3d 201, 206, \*\*\*. The mere reference to hearsay testimony in a



decision is not proof that a trial court relied on such testimony. *Adorante*, supra, at \*15.”  
(Parallel citations omitted.)

{¶72} In his appellate brief, Mr. Birks cites to two colloquies as sources of inadmissible hearsay. The first colloquy was between the assistant prosecutor on behalf of GCDJFS and Ms. Bates:

{¶73} “Q: What, if any, concerns did you have regarding Mr. Birks sharing information with Miss Hodgkinson?”

{¶74} “A: I had some concerns based on our conversation during the home visit we had to do the update to his home study.

{¶75} “When we had talked about, the caseworker, Susan Manning, had come along with me because she needed to have a home visit with Mr. Birks anyway.

{¶76} “And when we were talking about the assault case against Mr. Birks in Canada regarding his white son, I had asked Miss Hodgkinson if she was aware of the situation, and she said that she was not.

{¶77} “When I had asked Mr. Birks about his marriage, he had said that he was divorced. But the information that I had from his wife in Canada was that they were indeed still married.

{¶78} “So I felt that there was, you know, some question about his honesty with Miss Hodgkinson, which, you know, was a concern to me, as far as, you know, the security of the home and the kids being placed there.”

{¶79} Mr. Birks did not object to Ms. Bates’ testimony.

{¶80} The second colloquy was between the assistant prosecutor on behalf of GCDJFS and Ms. Manning:

{¶81} “A: I asked about the assault charges that we had been informed of against his wife’s child or possibly ex-wife right now in Canada, and he said those were dropped, and so I also asked for paper work to show that, and he had said that he would give it to me at the next home visit.

{¶82} “Q: Did you receive that?”

{¶83} “A: No.”

{¶84} Mr. Birks did not object to Ms. Manning’s testimony.

{¶85} In each of the foregoing colloquies, neither Ms. Bates nor Ms. Manning made reference to a specific third party out of court statement regarding Mr. Birks’ involvement with the Canadian justice system. “The Supreme Court of Ohio has held that testimony is not hearsay, when it ‘explains the actions of a witness to whom a statement was directed, such as to explain the witness’ activities’; ‘if an out-of-court statement is offered to prove a statement was made and not for its truth’; ‘to show a state of mind’; and ‘to explain an act in question.’” *In re Miller*, supra, at ¶31, quoting *State v. Maurer* (1984), 15 Ohio St.3d 239, 262. As Professor Giannelli explains, “[i]f the relevance of an out-of-court statement is that the statement was made, rather than the truth of the assertion contained in the statement, the statement is not hearsay.” Giannelli, *Giannelli Evidence* (2010), Sec. 801.7, 135-136. The statements at issue do not constitute hearsay under Evid.R. 801(C). Even assuming arguendo that the general references to information received about criminal charges in Canada constituted hearsay, we cannot say that either cited instance prejudiced him to the level of plain error.

{¶86} As evidenced from its judgment entry, Mr. Birks' involvement with the Canadian criminal justice system had little, if any, effect on the juvenile court's decision to deny his motion for custody. We agree with the observations of GCDJFS that the juvenile court in its judgment entry did not indicate that it relied on any statements regarding the criminal charges. In fact, the judgment does not even reference that testimony, contrary to Mr. Birks' argument. The only reference to Canada in the entry was that Mr. Birks' wife lived there. Therefore, we must presume that only properly admissible evidence was considered by the juvenile court in reaching its decision. See *In re K.R.*, supra, at ¶76.

{¶87} Mr. Birks' second assignment of error is without merit.

{¶88} For the foregoing reasons, Mr. Birks' assignments of error are not well-taken. The judgment of the Geauga County Court of Common Pleas, Juvenile Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.