[Cite as *In re A.L.A.*, 2011-Ohio-3124.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

IN THE MATTER OF: A.L.A and A.S.A., DEPENDENT CHILDREN	: : :	**O P I N I O N** **CASE NOS. 2011-L-020** **and 2011-L-021**

Civil Appeals from the Court of Common Pleas, Juvenile Division, Case Nos. 2009 DP 901, and 2009 DP 902.

Judgment: Affirmed.

Matthew W. Weeks, Carl P. Kasunic Co., L.P.A., Building I, STE. 300, 4230 State Route 306, Willoughby, OH 44094-6101 (For Appellants, Jerry and Susan Petrowski).

Charles E. Coulson, Lake County Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellee, Lake County Department of Job and Family Services).

Brett J. Plassard, 1875 West Jackson Street, Painesville, OH 44077 (Guardian ad litem).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, Susan Petrowski and Jerry Petrowski, appeal the judgment of the Lake County Court of Common Pleas, Juvenile Division, terminating Susan’s parental rights over her minor children, A.L.A. and A.S.A., and granting appellee, Lake County Department of Job and Family Services (“JFS”) permanent custody. At issue is whether the trial court’s decision was supported by the manifest weight of the evidence. For the reasons that follow, we affirm.

{¶2} As a preliminary matter, we note that appellants fail to demonstrate that Jerry has been aggrieved by the trial court's judgment. This case involves the termination of parental rights. As the children's step-father, Jerry has no parental rights and therefore lacks standing. *In re Neff* (June 14, 1978), 3d Dist. No. 1-78-9, 1978 Ohio App. LEXIS 8722, *4. ("Obviously, the step-father had no right of custody independently of his wife whereby he could have been aggrieved by the judgment of the trial court [terminating the mother's parental rights]. We do not further consider the appeal based on his standing.") In any event, in their appellate brief, appellants' arguments are made solely on Susan's behalf, arguing that the trial court's judgment improperly divested Susan of her parental rights. Appellants do not argue that Jerry has any parental rights with respect to the children. See App.R. 16(A)(7). We therefore hold that the appeal on behalf of Jerry lacks merit.

{¶3} On May 4, 2009, JFS filed two complaints alleging that A.L.A., then 12 years old, and A.S.A., 10 years old, were dependent children, pursuant to R.C. 2151.04, and requesting continued temporary custody. In the complaints, JFS alleged that on April 2, 2009, JFS social workers investigated a referral involving A.L.A. and A.S.A.. They had been residing with Susan and her boyfriend, Jerry, at his father's house in Madison, Ohio. On that date, the social workers interviewed Jerry, who stated that Susan and the girls no longer lived with him; that he believed A.L.A. and A.S.A. were in danger with Susan; that Susan was taking "dozens of prescription medications;" that Susan had stolen his prescribed medicines; and that she had smoked crack cocaine.

{¶4} JFS alleged that on April 3, 2009, Susan, along with A.L.A. and A.S.A., met with its social workers. Susan reported they were staying at the Forbes House due to domestic violence committed by Jerry. Susan said she had applied to the Domestic

Relations Court for a restraining order against him. Susan, A.L.A., and A.S.A. said they were afraid of Jerry and that Jerry had recently threatened A.L.A. with a knife.

{¶5} JFS further alleged that, despite the foregoing, on April 13, 2009, Susan returned to Jerry's house with A.L.A. and A.S.A.. Social workers met with both girls that day, and both said they were still afraid of Jerry. As a result, a safety plan was put in place, pursuant to which A.L.A. and A.S.A. were temporarily placed with Susan's friends, Mr. and Mrs. Hoffecker.

{¶6} On April 14, 2009, Susan and Jerry admitted to counselors that they had abused prescription medications. They also said the knife incident with A.L.A. was not really a threat. They said Jerry simply showed A.L.A. the knife because she had failed to do the dishes properly.

{¶7} JFS alleged that on April 15, 2009, Susan filed documents with the Domestic Relations Court stating that she had lied about Jerry threatening A.L.A. with a knife. She said she was drunk and on her medications and did not know what she was doing.

{¶8} JFS alleged that on April 30, 2009, Susan advised social workers that the safety plan that was in place was not safe for A.L.A. and A.S.A. due to the Hoffeckers' alleged alcohol consumption. Police officers responded to the Hoffeckers' home, and reported that the girls were "crying and begging" not to have to return to Susan's residence due to their fear of Jerry.

{¶9} On May 1, 2009, Susan and Jerry arrived at JFS stating they wanted A.L.A. and A.S.A. removed from the Hoffeckers' home and returned to them. Social workers contacted John Anderson, the children's natural father, who said he was not able to care for the girls. Social workers asked Susan, Jerry, and Mr. Anderson to meet

with them at the Madison Township Police Department to discuss the situation. While Mr. Anderson attended the meeting, Susan and Jerry did not. Consequently, Madison Township Police granted shelter care of A.L.A. and A.S.A. to JFS. Later that day, the girls were placed with foster parents. On May 4, 2009, the court held a 72-hour hearing, and placed the children in JFS' temporary custody.

{¶10} On May 28, 2009, a case plan was filed, which required Susan to: (1) complete a drug and alcohol assessment; (2) submit to random drug testing; (3) complete a mental health assessment, including family therapy; (4) actively participate in a domestic violence support group; and (5) comply with all recommendations of her service providers

{¶11} An adjudicatory hearing was held on July 10, 2009. At that hearing, Susan stipulated to the allegations of the complaints and to a finding that the girls were dependent. The trial court adopted the allegations of the complaints as the findings of the court, and found that A.L.A. and A.S.A. were dependent. The court granted continuing, temporary custody to JFS. It also granted Susan supervised visitation of the girls once a week at JFS and phone calls with the girls three nights a week, to be initiated and monitored by the girls' foster mother.

{¶12} On July 20, 2009, during a phone conversation between Susan and the children, overheard by the girls' foster mother, Susan told them in a threatening manner that she "knew where they lived and that they should be careful if they leave the home." The girls and their foster mother also heard Jerry loudly cursing and yelling at the girls in the background. As a result of this incident, the court temporarily suspended the previously-ordered phone calls.

{¶13} The disposition hearing was held on July 24, 2009, following which the trial court ordered Susan to comply with the case plan.

{¶14} An amendment to the case plan was filed on July 31, 2009, and adopted by the court on August 21, 2009, which joined Jerry as a party to the action and to the case plan because Susan had recently married him. The amended case plan continued Susan's goals in the original case plan with one added goal to meet JFS' concern that she was having a problem with drugs: she was required to complete a drug screen prior to each weekly supervised visit with the children. The amended case plan also required Jerry to: (1) complete a drug and alcohol assessment; (2) submit to random drug screens; (3) attend a parenting education program; (4) complete a mental health assessment; (5) attend an anger management group; and (6) comply with all recommendations.

{¶15} On November 20, 2009, based on threats made by Jerry against the children's foster parents and his yelling at the children during court-ordered phone calls, JFS filed a request for a restraining order/no contact order against Jerry. On January 20, 2010, the court granted the motion and entered an order prohibiting Jerry from coming within 500 feet of the foster family, the foster home, or the children. On October 4, 2010, JFS filed a motion for permanent custody of the children.

{¶16} On December 23, 2010, the children's guardian ad litem, Brett J. Plassard, filed a report with the court recommending the court grant permanent custody of the children to JFS.

{¶17} The case proceeded to trial on January 3, 4, and 12, 2011, on JFS' motion for permanent custody. Lora Nahm, A.L.A. and A.S.A.'s ongoing social worker at JFS, testified that during some of Susan's weekly visits, she appeared to be under the

influence of drugs. Her speech was slow and difficult to understand and she was unable to focus. In July 2009, Susan told Ms. Nahm she had a problem with prescription medications. During one supervised visit on April 15, 2010, Susan urinated in her pants in front of the girls and Ms. Nahm. During another visit on August 19, 2010, out of nowhere, Susan stood up and performed a cartwheel. Susan also appeared to be under the influence of drugs during two other visits with the girls in February and October 2010.

{¶18} Although Susan's case plan was ordered into effect in July 2009, she did not begin an alcohol and drug assessment until January 22, 2010, six months later, at the Lake-Geauga Recovery Center in Mentor, Ohio.

{¶19} Mara Sankin-Reese, an outpatient dependency counselor at Lake-Geauga, testified she performed Susan's drug and alcohol assessment. During Susan's initial interview on January 22, 2010, she appeared sedated. After the appointment, Ms. Sankin-Reese discovered that Susan recently had another drug and alcohol assessment in April 2009 at Signature Health. Because it was less than one year old, Ms. Sankin-Reese was able to use that assessment for the current referral. According to that assessment, Susan was dependent on opiates. Ms. Sankin-Reese said that when Susan returned for a follow-up appointment, her urine specimen contained Percocet, vicodin, and valium. Susan said her doctor had prescribed valium for anxiety and vicodin and Percocet for neck pain.

{¶20} Based on Susan's dependency, Ms. Sankin-Reese recommended intensive outpatient therapy. However, Susan said she could not sit for long periods of time due to neck pain so she could not do intensive outpatient. In order to accommodate Susan, Ms. Sankin-Reese developed an individual treatment plan,

including 12-step meetings. She scheduled three appointments for Susan, but she missed all three due to alleged "female problems."

{¶21} Lake-Geauga discharged Susan on June 16, 2010, due to her failure to comply with her individual treatment plan. Ms. Sankin-Reese advised Susan her case was closed until she was medically stable enough to participate in therapy. She told Susan she was concerned due to the medications she was taking. Susan said she knew the medications were addictive; that she needed to stop taking them; but that it was difficult for her to stop.

{¶22} Ms. Sankin-Reese told Susan to keep in touch with her, and that she could come back when she was medically stable, but she never heard from Susan again.

{¶23} Ms. Sankin-Reese testified that Susan could not comply with her treatment recommendations and be successfully treated because she was still taking substances, albeit prescribed. She testified that a client cannot be treated while medicated.

{¶24} Susan was also required to participate in family therapy. Susan began family therapy at Crossroads in May 2010, 10 months after her case plan was ordered into effect. Thereafter, out of 29 scheduled family therapy sessions, Susan cancelled 10. Further, she did not attend family therapy sessions for two months from June 4, 2010, to August 12, 2010.

{¶25} On June 2, 2010, after cancelling several scheduled visitation sessions with the children at JFS, Susan called Ms. Nahm and said she cancelled these visits as well as her family therapy sessions due to alleged stress. Susan said she was putting all her case plan goals on hold until further notice.

{¶26} Out of 85 scheduled visitation sessions with her children at JFS, Susan cancelled 30 of them. She provided many different excuses. For several weeks in a row in March 2010, Susan said she missed visitation due to her work. Ms. Nahm rescheduled visits to accommodate her work schedule. However, after the dates were changed, Susan often failed to show for the visitation. She later admitted that she was not even employed in that month.

{¶27} As a result of Susan's repeated failure to attend family therapy and the weekly visitation sessions with her children, on June 18, 2010, JFS filed a motion to show cause against her. At the hearing, Susan admitted she was in contempt for failure to comply with her case plan. Consequently, on September 14, 2010, she was found in contempt. The trial court sentenced her to 30 days in jail, but suspended the sentence on condition that she purge her contempt by: (1) completing a drug and alcohol assessment; (2) resuming attendance at family therapy sessions at Crossroads and visitation with her children at JFS; and (3) participating in a domestic violence support group. Ms. Nahm testified that after the purge order went into effect, Susan began to comply with her case plan.

{¶28} Following her discharge from Lake-Geauga in June 2010, Susan chose not to return there. Instead, three months later, on September 21, 2010, she went to Community Counseling Center ("CCC") in Ashtabula for a drug and alcohol assessment. This was 14 months after the court initially ordered her to obtain such an assessment. One week later, on September 29, 2010, Susan provided Ms. Nahm with a letter from CCC stating that Susan did not require any services and that CCC had no recommendations for her. In light of the extensive goals required of Susan by her case

plan, Ms. Nahm found CCC's report unusual. Consequently, she called CCC and provided Susan's history to them.

{¶29} Thereafter, on December 1, 2010, Tracey Filipasic, Susan's service provider at CCC, sent to Ms. Nahm a letter advising her that, due to discrepancies in Susan's drug screen results, CCC had made recommendations for Susan. Specifically, Susan was to receive drug and alcohol services; submit to random drug screens; and continue with couple's counseling, mental health services, and family therapy.

{¶30} Meanwhile, although Susan was required by her amended case plan to provide drug screens prior to each visit with the children, she did not comply with this requirement. Further, Ms. Nahm said that, while Susan provided some random drug screens, she failed to comply with Ms. Nahm's requests for drug screens in October 2009, and in January, February, and September 2010, in violation of her court-ordered case plan.

{¶31} Jerry was also ordered to submit to random drug screens when requested by the agency. Ms. Nahm requested a random drug test for Jerry on November 5, 2010, but he failed to comply.

{¶32} Ms. Nahm testified that, although Susan was ordered to attend and actively participate in a domestic violence support group in July 2009, the first time she attended one of these groups was in March 2010, eight months later. Susan attended another meeting in April, but did not attend again until August 2010. Then, shortly after the purge order was entered in September 2010, Ms. Nahm received a letter from the Ashtabula County Domestic Violence Shelter advising her that Susan had attended domestic violence services at the shelter in September and October 2010.

{¶33} Meanwhile, although Susan resumed visitation with her children after the purge order was entered, Susan's visits were far from therapeutic for the children. During the visits, Susan would refuse to validate A.L.A.'s trauma from witnessing Jerry abuse her. As a result, A.L.A. would become upset and angry and would often leave the visits and stay with Ms. Nahm for the rest of the visit.

{¶34} A.S.A.'s reaction to Susan's visits was more severe. A.S.A. was constantly anxious because she was afraid for her and her mother's safety. A.S.A. would express her fear of Jerry and then become upset when Susan trivialized her concerns. At times, A.S.A. would cover herself with a coat and cry; at other times, A.S.A. would react by harming herself. She drew pictures in which she crossed herself out, and was ultimately hospitalized for threatening to harm herself.

{¶35} Ms. Nahm testified that since May 2009, the girls have been placed with loving foster parents. The children have developed a strong bond with them. The girls' interaction with them is positive and the girls are thriving with them.

{¶36} Ms. Nahm said she visited Jerry and Susan for the first time on December 2, 2010, at the house owned by Jerry's father where Jerry and Susan have lived for three years. Ms. Nahm did not go there before due to concerns for her safety as a result of Jerry's anger and threats directed against her.

{¶37} Since the case plan has been in effect, JFS has given financial aid to Susan in the form of gas cards, free drug screens, and transportation to and from the various services to assist her in improving her parental conduct.

{¶38} Ms. Nahm said she has discussed a permanent placement for the girls with Susan and Mr. Anderson. Both advised her they have no relatives who could care for the girls.

{¶39} Ms. Nahm testified that, while Susan is currently meeting most of her case plan goals, she is still not fully case plan compliant because she failed to provide current documentation regarding compliance with her domestic violence and her drug and alcohol goals. Moreover, Susan did not obtain drug screens prior to her visits with the girls, and failed to comply with numerous specific requests for random drug screens.

{¶40} Doreen Hanhauser testified that she and her husband are licensed foster parents, and that A.L.A. and A.S.A. came to live with them on May 1, 2009. She said that, at first, the girls had boundary issues, like not closing the door while in the bathroom and inappropriate sexual behavior between the girls. Further, their hygiene was poor. They did not use soap or shampoo. As a result, A.L.A. smelled and her classmates made fun of her at school. Their manners were also poor. However, the girls were very receptive to learning what was expected of them, and they have corrected each of these issues.

{¶41} During the first few months the girls were living with the Hanhausers, Ms. Hanhauser noticed both were afraid for Susan and angry with her. A.S.A. was especially anxious. In July 2009, she made threats to harm herself and started drawing pictures depicting herself as being hung. Consequently, A.S.A. was taken to Rainbow Babies and Children's Hospital, where she was treated for post traumatic stress disorder. In the last several months, while living with the Hanhausers, A.S.A. has become far less anxious.

{¶42} With respect to their education, both girls have special needs and an individual education plan at school. Initially, both struggled with spelling and math. In August 2009, A.S.A. had surgery to correct a cleft pallet, which severely affected her speech. Since living with the Hanhausers, their grades have greatly improved. A.S.A.

gets As and Bs and A.L.A. gets Cs. Also, the girls have not missed any time from school.

{¶43} Ms. Hanhauser drives the girls to visitation sessions at JFS. During one of these visits, when she drove into the parking lot, she and the girls saw Jerry sitting in his truck. At the time the no-contact order against him was in effect requiring him to stay more than 500 feet away from the girls and Ms. Hanhauser. Jerry knew the girls would be there so Ms. Hanhauser called the Mentor Police. The officer talked to the parties and left the scene without taking any action. Susan came out of the building and said to Ms. Hanhauser, "nice try," and gave her the finger.

{¶44} Pursuant to court order, Ms. Hanhauser initiated phone calls between Susan and the girls. These phone calls were often traumatic for the children, ending with Susan hanging up on them.

{¶45} The Hanhausers have a large four-bedroom, three-bathroom home on a three-quarter acre lot. A.L.A. and A.S.A. have their own bedroom. The family has several pets and the girls enjoy caring for them. The Hanhausers' annual income is $75,000, and they are financially able to support the children.

{¶46} Ms. Hanhauser testified that if permanent custody was granted to the agency, she and her husband would adopt the children.

{¶47} Tracey Filipasic, a mental health and drug and alcohol counselor at CCC, testified that in September 2010, Tim Hicks of CCC conducted a drug and alcohol assessment of Susan under Ms. Filipasic's supervision. During her initial interview, Susan misrepresented the reason for the assessment and concealed relevant information about her history. She said she needed the assessment because her

children had been removed by JFS upon receipt of a complaint that Susan had been seen drinking alcohol in front of them.

{¶48} When Mr. Hicks asked Susan if she had any prior alcohol or drug treatment or assessments, she said she had not. As a result, he was unaware that Susan had previously been assessed and treated by CCC, Signature Health, and Lake-Geauga. With respect to her drug usage, Susan said she was only taking opiates as needed for pain from dancing, which, she said, had been prescribed by her doctor. Based solely on the information provided by Susan at this initial interview, Mr. Hicks recommended that Susan did not require any services.

{¶49} After reviewing CCC's report, Ms. Nahm called Ms. Filipasic and provided Susan's history to her. Based on this information, Ms. Filipasic performed a reassessment and decided to do a drug screen for Susan to determine if there were any drugs in her system.

{¶50} In a follow-up interview with Susan, when Ms. Filipasic asked her about her drug usage, she said she was only taking Percocet and valium. However, Susan also tested positive for vicodin. When Ms. Filipasic told Susan that this drug was also found in her system, Susan showed Ms. Filipasic a prescription for vicodin. However, the prescription for this drug was six months old and had expired. Ms. Filipasic told Susan to stop taking vicodin because she did not have a current prescription for it.

{¶51} Susan is still receiving individual counseling and providing drug screens at CCC. Ms. Filipasic diagnosed Susan with an adjustment disorder with depression and anxiety. Ms. Filipasic is still determining whether Susan is addicted to opiates. Although Ms. Filipasic recommended that Susan regularly attend 12-step meetings, as of the trial date, she had only attended one.

{¶52} Further, Susan often failed to attend the weekly counseling sessions as recommended by CCC. Out of 45 scheduled sessions between October 2009 and November 2010, Susan either cancelled or simply failed to attend 17 appointments.

{¶53} Therese Misencik, the girls' therapist at Crossroads, testified that she began counseling A.L.A. and A.S.A. in May 2009. She said that when Susan first brought A.S.A. in for therapy, she did not tell Ms. Misencik that A.S.A. was in the temporary custody of JFS. She learned this several weeks later from JFS.

{¶54} At first, A.L.A. was suffering from flashbacks caused by trauma from incidents of domestic violence she had witnessed in the home coupled with low self-esteem. She was diagnosed with adjustment disorder with anxiety and depressed mood. A.S.A.'s symptoms were more severe. Initially, she suffered from post traumatic stress disorder. She eventually became suicidal and was hospitalized.

{¶55} Ms. Misencik helped the girls process their anger with Susan. They would often become upset after their phone calls with Susan. They tried to work through their anger over the phone, but Susan's unsympathetic response often left them tearful and upset.

{¶56} Ms. Misencik's primary focus with the family therapy sessions was to repair the children's relationship with Susan. The family sessions were held once a week. However, Susan was not consistent in attending family therapy and missed ten out of 29 scheduled family therapy appointments. Appellant's cancellations left the girls sad, tearful, angry, and disappointed. Ms. Misencik said Susan's chronic absence interfered with her efforts to repair Susan's relationship with the girls.

{¶57} During one session, Ms. Misencik questioned whether Susan was sober. She was jittery, muffled her words, and avoided eye contact.

{¶58} Ms. Misencik told Susan the girls had been traumatized by witnessing Jerry commit acts of domestic violence against her. However, Susan repeatedly denied or minimized the domestic violence.

{¶59} Ms. Misencik said there has only been minimal progress due to Susan's repeated refusal to validate the girls' trauma. At the treatment sessions, Susan's unsympathetic response would make the girls upset and angry, and Susan would become defensive. As a result, Ms. Misencik has been unable to work through the girls' trauma, and has not been able to move the sessions beyond discussions about trivial topics.

{¶60} Despite the no-contact order that was still in place, Ms. Misencik said she discussed adding Jerry to family therapy with A.L.A. and A.S.A., but their reaction to this was fear.

{¶61} Ms. Misencik testified that she cannot foresee a time when the girls will be able to work through their anger and trauma and overcome their fear of Jerry. After working with Susan and the children for over 20 months from May 2009 to January 2011, Ms. Misencik testified she is still at the beginning stages of family therapy with Susan and the girls due to the girls' anger toward Susan for refusing to validate their trauma and also due to their fear of Jerry. She testified the girls will need years of therapy.

{¶62} Ms. Misencik testified that if Susan continues to refuse to validate the trauma suffered by the girls, therapy cannot be successful within a reasonable time. In fact, Ms. Misencik said that, in her opinion, the extended period of time the girls have already been in therapy with her, from May 2009 to January 2011, is unreasonable.

{¶63} Susan testified, on cross-examination, that she and the girls have been living with Jerry for three years at his father's house. It is a small three-bedroom, one-bathroom house. Susan and Jerry share one bedroom; his father has a bedroom; and the girls share one bedroom. All five of them share the same bathroom. Susan said that Jerry does not get along with A.L.A. because, he claims, she stole some coins from him two years ago.

{¶64} Susan said she can get 80 Percocets and 30-50 valiums every month from her doctor.

{¶65} Susan said she has not worked since February 2010, and that she still does not have a job because she does not enjoy working. She said her only source of income comes from occasionally helping her father-in-law sell vegetables. She estimated her annual income as $5,000. Jerry is disabled due to a knee replacement and receives $7,000/year in social security disability. Consequently, their total combined annual income is about $12,000.

{¶66} Susan admitted that Jerry had committed acts of violence against her and that she had obtained a restraining order against him. She said she withdrew the restraining order because she and Jerry worked things out.

{¶67} In describing the treatment sessions, Susan said both girls lie to her about many things. She said that when she brings this up during the sessions, the counselor "yells at her" because she is not letting the girls "do their feelings."

{¶68} Susan does not have a driver's license or a car and is completely dependent on Jerry for her transportation.

{¶69} Joseph Cancilliere, counselor at CCC, was called as a witness for the defense. He testified he has been providing mental health services to Susan and Jerry

since October 2009 for their anger management. He said that Susan has a history of abusing prescribed medications.

{¶70} Susan has told him the girls lie and steal and are manipulative. She said the girls yell at her during their phone calls. He said Susan and Jerry are making progress, but admitted this opinion was based solely on their self-reporting as he has never met the girls.

{¶71} Mr. Cancilliere testified that in his opinion, the girls should be included in the counseling sessions with Jerry and Susan; however, he admitted on cross-examination that Susan had never told him about any domestic violence in the home.

{¶72} John Anderson, the children's natural father, testified that he is unable to care for the girls and that he believes it is in their best interest that JFS be awarded permanent custody.

{¶73} Finally, Brett J. Plassard, the girls' guardian ad litem, testified that it is in the best interest of the children that the court grant JFS' motion for permanent custody. He said it is the girls' desire that permanent custody be granted. A.S.A. told him she does not want to go back with her mother and wants to stay with her foster family. A.L.A. said she is happy in her foster home and does not want to return to Susan.

{¶74} Mr. Plassard testified that Susan blames the girls for being removed from the home and refuses to acknowledge that she has done anything to cause it. She ignores the fact, as confirmed in the court's adjudicatory entry, that both she and Jerry have admitted to prescription medication abuse.

{¶75} Mr. Plassard stated that the restraining order issued by the Domestic Relations Court in April 2009 was based on Susan's allegations that Jerry had abused her and threatened A.L.A. with a knife. He said that when Susan withdrew the

restraining order and married Jerry just before the disposition hearing in July 2009, Susan chose him over her own children.

{¶76} The court noted that the girls advised during an in camera interview that it was their wish that permanent custody be granted to JFS.

{¶77} On January 13, 2011, the trial court entered judgment granting permanent custody of the children to JFS and terminating Susan and Mr. Anderson's parental rights.

{¶78} Susan and Jerry appeal the trial court's judgment. The two cases have been consolidated on appeal. Appellants assert two assignments of error. For their first assignment of error, they allege:

{¶79} "The trial court abused its discretion when it decided to grant the Department's Motion for Permanent Custody and this decision is against the manifest weight of the evidence."

{¶80} As a preliminary matter, we note that a parent's right to raise a child is a basic civil right. *In re Hayes* (1997), 79 Ohio St.3d 46, 48. Consequently, a parent defending a motion for termination of parental rights "'must be afforded every procedural and substantive protection the law allows.'" *Hayes*, supra, quoting *In re Smith* (1991), 77 Ohio App.3d 1, 16.

{¶81} 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)(1) outlines a two-prong analysis. Under the first prong, the juvenile court must determine, by clear and convincing evidence, whether one of the following circumstances applies: (a) that the child cannot be placed with either of the child's parents within a reasonable time based on an analysis of R.C. 2151.414(E); (b) that the child is abandoned; (c) that the child is

orphaned; or (d) that the child has been in the temporary custody of one or more public children services agencies for at least 12 months of a consecutive 22-month period. If the court determines that one of the foregoing circumstances under R.C. 2151.414(B)(1) applies, the court proceeds to a determination of the second prong in which it considers whether the award of permanent custody to the agency is in the best interest of the child, based on an analysis of R.C. 2151.414(D).

{¶82} In determining whether the child cannot be placed with either parent within a reasonable period of time under R.C. 2151.414(B)(1), the juvenile court must consider all relevant evidence before making this determination. The juvenile court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the conditions enumerated in R.C. 2151.414(E) exist with respect to each of the child's parents. *In re Krems*, 11th Dist. No. 2003-G-2535, 2004-Ohio-2449, at ¶33-34. "'The existence of a single [R.C. 2151.414(E)] factor will support a finding that a child cannot be placed with either parent within [a] reasonable period of time.'" *In re J.S.E.*, *J.V.E*, 11th Dist. Nos. 2009-P-0091 & 2009-P-0094, 2010-Ohio-2412, at ¶40, quoting *In re S.M.*, 11th Dist. No. 2008-G-2858, 2009-Ohio-91, at ¶23.

{¶83} R.C. 2151.414(E) provides, in pertinent part, as follows:

{¶84} "(E) In determining *** whether a child cannot be placed with either parent within a reasonable period of time ***, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, *** that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time:

{¶85} "(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist

the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. *In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services *** that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.*

{¶86} "***

{¶87} "(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or *by other actions showing an unwillingness to provide an adequate permanent home for the child* ***. ***" (Emphasis added.)

{¶88} As noted above, if the trial court finds that one of the four circumstances listed in R.C. 2151.414(B)(1) is present under the first prong of the permanent custody analysis, then the court must proceed to an analysis of the child's best interest under the second prong. In making this determination, R.C. 2151.414(D) mandates that the juvenile court 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.

{¶89} "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) *** is present. 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. ***." (Internal citation omitted.) *In re Krems*, supra, at ¶36.

{¶90} "'[W]e 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.'" *In re J.S.E.* supra, at ¶25, quoting *In re T.B.*, 11th Dist. No. 2008-L-055, 2008-Ohio-4415, at ¶36.

{¶91} In cases involving the termination of parental rights, an appellate court applies the civil manifest weight of the evidence standard of review. *In re D.H., C.H., and R.H.,* 11th Dist. No. 2009-G-2882, 2009-Ohio-2798, at ¶21. According to this standard, "'[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.'" Id., quoting *C. E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶92} Under the first prong of the permanent custody analysis, the trial court found that the children cannot be placed with Susan within a reasonable time, pursuant to R.C. 2151.414(B)(1). In support of such finding, the court found that two factors under R.C. 2151.414(E) exist as to Susan, i.e., R.C. 2151.414(E)(1) and (E)(4), and one factor exists as to Mr. Anderson, i.e., R.C. 2151.414(E)(4).

{¶93} First, as to Susan, pursuant to R.C. 2151.414(E)(1), the court found that after placement of the children outside of the home and despite JFS' reasonable case planning and diligent efforts to assist Susan to remedy the problems that caused the children to be placed outside the home, Susan continuously and repeatedly failed to substantially remedy the conditions causing the placement outside the home. We note that those conditions are the girls' witnessing domestic violence and their fear of Jerry.

{¶94} Pertinent to this factor is whether Susan utilized the various services provided by JFS. See R.C. 2151.414(E)(1). The court found Susan's attempts to comply with the case plan have been "limited, sporadic, and inconsistent." The court also found she did not begin to make sincere efforts until the motion to show cause was filed in June 2010. The court also found that Susan had demonstrated a lack of case plan compliance by not regularly submitting to drug screens prior to her visits with the children and by not beginning to work on her domestic violence goals until September and October 2010. Further, the court noted Ms. Misencik testified that Susan was not consistent with family therapy and even unilaterally suspended family therapy for two months. The court found that only minimal progress has been made in family therapy, and that Susan's minimization and lack of validation of the trauma suffered by the children has contributed to the lack of progress.

{¶95} Appellants argue it is irrelevant that Susan did not attempt to comply with the case plan until after the show cause motion was filed. We do not agree. The fact that Susan did not begin to make any real attempt to comply with her case plan until after the agency filed its motion against her demonstrates a lack of commitment to remedy the conditions that caused the girls to be placed outside the home. This court has recognized that the timing of a defendant's efforts to comply with a case plan is

relevant to the issue of compliance. In *In re D.H.*, supra, this court stated that a finding that the mother only made progress addressing her mental health concerns after a motion for permanent custody was filed militated against a finding of compliance with the case plan. Id. at ¶45.

{¶96} Contrary to appellants' argument that Susan is now in substantial compliance with most of her case goals, the trial court's finding is supported by Susan's repeated failures, over an extended period, to comply with her drug and alcohol assessment goal, her random drug screen goal, her goal requiring drug screens before each visitation, her family therapy goal, her weekly visitation goal, and her domestic violence goal. The court's finding is further supported by Susan's cancellation of 30 out of 85 visitation sessions with her children at JFS, 17 out of 45 therapy sessions at CCC, and 10 out of 29 family therapy sessions at Crossroads. The court's finding is also supported by Ms. Misencik's testimony that: (1) Susan's chronic absence from family therapy sessions has interfered with her efforts to repair Susan's relationship with her children, and that (2) family therapy is still in the "beginning stage" and will require years to complete due to Susan's refusal to validate the girls' trauma and their fear of Jerry.

{¶97} Appellants concede on appeal that the girls' fear of Jerry remains an obstacle to reunification, but that "substantial progress has been made on that goal." However, there is no evidence in this record that any progress in addressing this obstacle has been made. The girls' fear of Jerry and the trauma they have suffered after witnessing him commit acts of domestic violence against their mother have not been addressed because Susan continues to deny or minimize the violence and in fact blames the girls for the lack of reunification.

{¶98} By failing to take advantage of the services provided by JFS to reunite her with her children, Susan has repeatedly failed to remedy the conditions that caused the children to be removed from the home.

{¶99} Second, pursuant to R.C. 2151.414(E)(4), the trial court found that Susan has also demonstrated a lack of commitment toward the children by actions which show an unwillingness to provide an adequate permanent home for them. Specifically, the court found that Susan's behavior has created a "wedge" between her and the children. The court found that, based on the children's fear of Jerry, a no-contact order was entered between him and the children and that, since Susan has chosen to live with Jerry, her home can never be an adequate permanent home for the children.

{¶100} With respect to Mr. Anderson, the court found that he has also demonstrated a lack of commitment toward the children pursuant to R.C. 2151.414(E)(4) by failing to regularly support, visit, or communicate with the children when able to do so or by his actions showing an unwillingness to provide an adequate permanent home for them.

{¶101} Based on the trial court's finding that, as to Mr. Anderson, one R.C. 2151.414(E) factor exists and, as to Susan, two factors exist, which findings were supported by clear and convincing evidence, we hold the trial court's finding that the children cannot be placed with either parent in a reasonable time is supported by competent, credible evidence.

{¶102} Under the second prong of the permanent custody analysis, the trial court's judgment demonstrates it properly considered all the factors required under R.C. 2151.414(D) regarding the best interests of the children. Appellants take issue with only two of the best interest factors. First, appellants argue that in considering Susan's

interaction and interrelationship with the children, the court should have noted in its entry Susan's contacts with the children during their phone calls, their weekly family therapy sessions, and their contacts prior to JFS' involvement.

{¶103} First, with respect to the phone calls, these conversations were often traumatic for the girls and counter-productive. When the girls would attempt to work through their problems with Susan over the phone, she would often become defensive and hang up on them.

{¶104} Second, with respect to family therapy sessions, due to Susan's refusal to validate the girls' trauma, Ms. Misencik testified there has only been minimal progress in therapy. She also said that Susan's chronic absence has interfered with her efforts to repair Susan's relationship with the girls.

{¶105} Appellants argue the fact that the girls' counselor, Ms. Misencik, and Jerry's counselor, Joe Cancilliere, planned to bring Jerry into their respective therapy sessions demonstrates that great progress has been made in family therapy. However, Ms. Misensik testified that when she raised the issue of including Jerry, the girls' reaction was fear. Moreover, Ms. Misencik said she cannot see a time when the girls will be able to overcome their fear of Jerry and work through their anger and trauma. Mr. Cancilliere said he had never met the girls and had never been told about the domestic violence they had witnessed. He was, therefore, in no position to make any decisions about whether they should be included in therapy with Jerry. In any event, the court found Mr. Cancilliere's testimony not credible since it was based solely on Susan's self-reporting.

{¶106} Third, with respect to the time Susan has spent with the girls prior to JFS' involvement, Susan fails to point to any evidence in the record that the court should

have referenced. Moreover, it does not escape our attention that Susan admitted in court that, prior to JFS' involvement, her children were dependent children.

{¶107} In these circumstances, we perceive no error in the court's failure to reference any bonding between Susan and her children as a result of the phone calls, family therapy sessions, or contacts prior to JFS' intervention.

{¶108} Next, appellants argue the court's finding that the children need a legally secure placement due to Susan's inability to provide such placement in a reasonable time is against the manifest weight of the evidence. In support, they argue that Susan has shown improvement with her case plan, which, they claim, warrants giving her even more time to complete her case plan goals. The argument is defeated by Ms. Misencik's testimony that she cannot foresee a time frame for the girls to work through their anger and trauma and overcome their fear of Jerry. Susan "*** is afforded a reasonable, not an indefinite, period of time to remedy the conditions causing the children's removal." See *In re L.M. and A.M., Jr.*, 11th Dist. No. 2010-A-0058, 2011-Ohio-1585, at ¶50.

{¶109} While appellants do not challenge the findings of the court regarding the other best interest factors, it is important to note that, in considering the wishes of the children, the court found that the girls advised during an in camera interview that it was their wish that permanent custody be granted to JFS and that the guardian ad litem had stated this was the girls' desire. Further, the guardian testified it was in the girls' best interest that permanent custody be granted. We note that, while still minors, A.L.A. and A.S.A. are now 14 and 11 years old, respectively, and there is nothing to suggest that they were not mature enough to make their wishes known to the court and the guardian ad litem.

{¶110} We hold the trial court did not err in its findings pursuant to R.C. 2151.414(D)(1) through (D)(4) regarding the best interests of the children as each was supported by competent, credible evidence.

{¶111} We therefore hold the trial court's judgment was not against the manifest weight of the evidence.

{¶112} Appellants' first assignment of error is overruled.

{¶113} For their second assigned error, appellants contend:

{¶114} "Mother and Step-father were denied the effective assistance of counsel in that counsel denied Mother and Step-Father's requests to call witnesses to testify regarding the lack of merit in the Department's allegations."

{¶115} The standard of review for ineffective assistance of counsel was stated by the United States Supreme Court in *Strickland v. Washington* (1984), 466 U.S. 668, 687.

{¶116} In order to support a claim of ineffective assistance of counsel, the defendant must satisfy a two-prong test. First, he must show that counsel's performance was deficient. *Strickland*, supra. Second, the defendant must show the deficient performance prejudiced the defense. It is well-settled that strategic and tactical decisions do not constitute a deprivation of the effective assistance of counsel. *State v. Clayton* (1980), 62 Ohio St.2d 45, 49.

{¶117} Appellants argue that because their trial counsel did not call Jerry and certain other witnesses, their counsel was ineffective and they are entitled to a new trial. However, in *State v. Wolf* (Dec. 30, 1994), 11th Dist. No. 93-L-151, 1994 Ohio App. LEXIS 5993, this court held, "the calling of *** a witness can best be viewed as a tactical decision ***." Id. at *27. Thus, the decision to call, or not to call, a certain witness to the

stand is subject to the strong presumption that the decision might be considered sound trial strategy. Id. at *28.

{¶118} Since the decision to call Jerry or any other witness to testify is a strategic decision, trial counsel was not ineffective for not calling them to the stand. We also note that there is no evidence in the record indicating how any of these witnesses would have testified if called. Consequently, even if appellants could show that counsel's performance was deficient, there was no showing of prejudice.

{¶119} Appellants' second assignment of error is overruled.

{¶120} For the reasons stated in the opinion of this court, the assignments of error lack merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas, Juvenile Division, is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.