

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

IN RE: : **O P I N I O N**
C.D.D. AND H.G.D. : **CASE NOS. 2011-P-0065
and 2011-P-0066**

Civil Appeals from the Portage County Court of Common Pleas, Juvenile Division,
Case Nos. 2011 JCC 358 and 2011 JCC 359.

Judgment: Affirmed.

James W. Armstrong, Leipply & Armstrong, 101 Riverfront Centre, 2101 Front Street,
Cuyahoga Falls, OH 44221 (For Appellant).

Victor V. Viglucci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant
Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellee).

Corinne Hoover Six, The Law Offices of Corinne Hoover Six, 527 Portage Trail,
Cuyahoga Falls, OH 44221 (Guardian ad litem).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Kevin M. Desatnik, appeals from a judgment of the Portage
County Court of Common Pleas, Juvenile Division, adopting a magistrate’s decision and
adjudicating his children neglected and dependent.

{¶2} Kevin and Michelle L. Desatnik are the natural parents of C.D.D. and
H.G.D. (“minor children”). This matter began as a result of Michelle calling 9-1-1

because she believed that C.D.D., their three-year-old son, had ingested either cranberry extract or some prescription medications. Ultimately, both minor children were subjected to hospital examinations and testing due to Kevin's and Michelle's hallucinations that their children had ingested prescription pills, experienced a septic rash, potassium overdose, cardiac arrest, seizures, strokes, a respiratory emergency, and poisoning by their grandparents. Later home visits revealed the family's apartment was a "disaster," with exposed hypodermic needles, pills, pill bottles, I-V bags, and I-V fluids lying around the house, firearms and a sword found underneath clothing, as well as disabled smoke detectors and thermostats with exposed wires hanging from the walls.

{¶3} Thereafter, appellee, Portage County Department of Job and Family Services ("PCDJFS") filed complaints in Case Nos. 2011 JCC 358 and 2011 JCC 359, alleging the minor children were abused, neglected, and dependent. In the complaints, PCDJFS sought temporary custody of the minor children due to ongoing questions regarding their health, their parents' admitted use of bath salts, a legal stimulant claiming similar highs to methamphetamines and cocaine, as well as illegal drugs, their father's positive drug screen for methamphetamines, and their parents' suspected mental health issues.

{¶4} A guardian ad litem ("GAL") was appointed to represent the best interests of the minor children. Following a shelter care hearing, the minor children were placed in the interim pre-dispositional temporary custody of PCDJFS.

{¶5} Thereafter, an adjudicatory hearing was held before a magistrate. The testimony revealed that after receiving the 9-1-1 call and arriving at the residence,

paramedics and poison control told Michelle that C.D.D. may experience some nausea but was under no harm and recommended home care. Dissatisfied with their advice and believing that something was wrong with her son, Michelle “carried on” until paramedics transported him to Robinson Memorial Hospital.

{¶6} At Robinson Memorial, Kevin and Michelle believed that something was also wrong with their four-year-old daughter. According to Dr. Angela Rose Robinson, an emergency room physician at Robinson Memorial, the scene was an “emotional chaos.” Kevin and Michelle began screaming that H.G.D. had perioral cyanosis, a blue tint around a person’s mouth indicating that they are dying, as well as a severe rash. Michelle was “very frantic” and later tried to shove her fingers down C.D.D.’s throat because she thought she saw a pill. Michelle had a full blown anxiety attack and was found crunched up on a bathroom floor. Kevin was very confrontational and was yelling that he wanted C.D.D. to have an I-V and be hooked up to monitors. Believing that H.G.D. was having a seizure and was in cardiac arrest, Kevin began hitting her on the back.

{¶7} The minor children were subjected to examinations and testing at Robinson Memorial. Dr. Robinson found the children acting like regular preschool aged children who had not ingested anything. Dr. Robinson provided care and services to the minor children out of concern for their well-being and believed they were not going to be cared for by their possibly psychologically disturbed parents. Because Kevin and Michelle had numerous concerns about their children, acted in a “bizarre” and “chaotic” manner, and disagreed with Dr. Robinson’s assessment, Dr. Robinson recommended the minor children be transferred to Akron Children’s Hospital.

{¶8} Later that day, Dr. Eric Singer, an emergency room physician at Akron Children's Hospital, also found the children acting like regular preschool aged children who had not ingested anything. However, Dr. Singer was concerned about Kevin's and Michelle's bizarre behaviors regarding new symptoms and medical conditions that only they were able to observe, including: a septic rash; potassium overdose; full cardiac arrest; seizures; strokes; and poisoning by their children's grandparents. Like Robinson Memorial, Akron Children's provided care and services to the minor children out of concern for their well-being.

{¶9} After conducting full examinations, Dr. Singer found nothing wrong with the minor children and discharged them. However, Kevin and Michelle immediately rushed back in claiming that H.G.D. was having a stroke, turning blue, and not breathing. Dr. Singer disagreed but admitted H.G.D. for observation. Kevin and Michelle then claimed that C.D.D. was also having a stroke. Dr. Singer disagreed but admitted C.D.D. for observation as well.

{¶10} In the meantime, Kevin and Michelle were both admitted and hospitalized at Akron General Medical Center for mental issues. The minor children were discharged from Akron Children's to their maternal grandparents.

{¶11} After Kevin and Michelle were released from Akron General, they made allegations that their children were being poisoned and reported a break-in at their apartment. They claimed the minor children's grandparents had planted drugs and poisoned their children. Patrolmen Kelly Waldeck and Dwayne Ryan Kaley with the Ravenna City Police Department met with Kevin and Michelle at their residence. The officers testified that the condition of the home appeared as though it had been hit by a

tornado. The apartment was a “disaster” with exposed hypodermic needles, pills, pill bottles, I-V bags, and I-V fluids lying around the house. Firearms and a sword were found underneath a bunch of clothes. Kevin and Michelle admitted to taking bath salts. Kevin told Patrolman Kaley that while the minor children were in Akron Children’s, he and Michelle ended up in a mental facility.

{¶12} Andrea Lynn Reynolds, a family assessment specialist with PCDJFS, met with Kevin and Michelle to assess the situation. Both parents admitted to using bath salts. Kevin and Michelle indicated that a few days after their children’s release from Akron Children’s, they went to Rainbow Babies and Children’s Hospital and The Cleveland Clinic. The minor children were treated for concerns of gastritis symptoms, given fluids, and discharged into the protective care of PCDJFS.

{¶13} A couple of weeks later, Kevin reported a car fire at his residence. Patrolman Matt Meyers with the Ravenna City Police Department investigated the matter but observed no fire. Because there was also a claim of a smoke smell in the apartment, Patrolman Meyers went inside. The home had disabled smoke detectors and thermostats with exposed wires hanging from the walls. A case containing a couple of partially opened rifles was found on the bedroom floor. Kevin and Michelle believed that someone was “messaging with them.”

{¶14} Kevin and Michelle later reported another suspected break-in at their home and claimed the power was not working. Patrolman Meyers responded to their call and investigated the matter. He observed no suspicious activity or person at the apartment and found nothing wrong with the power.

{¶15} Kevin and Michelle later completed drug and alcohol assessments. Linda Rolinson, a licensed independent chemical dependency counselor, testified that Kevin and Michelle admitted to using bath salts and prescription medications. Both had used illegal drugs in the past. At the time of Rolinson’s assessment, Kevin tested positive for methamphetamines. Rolinson was afraid that Kevin and Michelle were either going to hurt themselves or someone else.

{¶16} The GAL filed a report recommending the minor children be placed in the pre-dispositional custody of PCDJFS and in their current placement with their paternal grandparents. The GAL further recommended the minor children only have very closely supervised visitation with their parents in the presence of PCDJFS staff. Also, the GAL recommended the parents address any mental illnesses or drug abuse issues.

{¶17} The magistrate dismissed the allegations of abuse but found the minor children neglected and dependent. Kevin and Michelle filed objections. The juvenile court overruled their objections and adopted the magistrate’s decision. The court later granted temporary custody of the minor children to PCDJFS. Kevin filed timely appeals asserting the following assignments of error:¹

{¶18} “[1.] The Trial Court erred by finding the minor children to be neglected and dependent children without sufficient evidence.

{¶19} “[2.] The Trial Court abused its discretion and the Father was denied due process when the Trial Court denied his Motion to Continue the Adjudication Hearing.”

{¶20} In his first assignment of error, Kevin argues the juvenile court erred in finding the minor children neglected and dependent, contrary to the manifest weight and

1. This court, sua sponte, consolidated these two appeals for purposes of briefing, oral argument, and disposition. We also note that Michelle is not a named party to this appeal.

sufficiency of the evidence. Specifically, Kevin alleges that PCDJFS failed to prove by clear and convincing evidence that his children were neglected, pursuant to R.C. 2151.03(A)(2). He contends it is unclear what specific, neglected condition of the minor children was caused by the faults or habits of him and Michelle. Kevin stresses that although he and Michelle admitted to using bath salts, there was no evidence that their children were not receiving adequate care. He contends the court's finding that his and Michelle's drug usage may have affected their mental health and cognitive behaviors was speculative. Also, Kevin specifically argues that PCDJFS failed to prove by clear and convincing evidence that the minor children were dependent, pursuant to R.C. 2151.04(C). He maintains his children were not in a condition or environment warranting intervention. Kevin asserts that this case merely involved seeking proper medical treatment for his children.

{¶21} A juvenile court's adjudication regarding a claim of abuse, neglect, and/or dependency must be supported by clear and convincing evidence. *In re Anthony*, 11th Dist. No. 2002-A-0096, 2003-Ohio-5712, ¶16. "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." *In re Krems*, 11th Dist. No. 2003-G-2535, 2004-Ohio-2449, ¶36, citing *In re Holcomb*, 18 Ohio St.3d 361, 368 (1985).

{¶22} Appellate courts apply the criminal standard for reviewing manifest weight challenges in juvenile proceedings involving abuse, neglect, and/or dependency. *In re Savchuk*, 180 Ohio App.3d 349, 2008-Ohio-6877, ¶28 (11th Dist.). "Under this standard, when reviewing a claim that a judgment was against the manifest weight of

the evidence, an appellate court must review the entire record, weigh both the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts, the trier of fact clearly lost its way and created * * * a manifest miscarriage of justice * * *.” *Id.*, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶23} “[O]nce the clear and convincing standard has been met to the satisfaction of the (juvenile) court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof.” *Id.* at ¶29, quoting *In re Holcomb, supra*, at 368. Sufficiency is a legal term of art describing the legal standard which is applied to determine whether the evidence is legally sufficient to support the judgment as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

{¶24} With respect to neglect, R.C. 2151.03(A)(2) defines a “neglected child” as any child “[w]ho lacks adequate parental care because of the faults or habits of the child’s parents * * * [.]”

{¶25} “‘Adequate parental care’ means the provision by a child’s parent or parents * * * of adequate food, clothing, and shelter to ensure the child’s health and physical safety and the provision by a child’s parent or parents of specialized services warranted by the child’s physical or mental needs.” R.C. 2151.011(B)(1).

{¶26} PCDJFS presented evidence that both Kevin and Michelle exhibited behaviors indicative of faults or habits that prevented them from meeting the physical or mental needs of their children. The evidence reveals that neither Kevin nor Michelle provided adequate parental care because of their admitted use of bath salts, which led

to their hallucinations, delusions, paranoia, and disorientations. Due to the behaviors they exhibited as a result of using bath salts, Kevin and Michelle subjected their children to multiple medical examinations and testing as well as created emotional “chaos” at Robinson Memorial and Akron Children’s.

{¶27} In particular, at Robinson Memorial, Kevin attempted to revive H.G.D. from what he “saw” was cardiac arrest and unnecessarily administered a series of hand blows to the child’s back. Even after Akron Children’s pronounced the minor children healthy and discharged them, within minutes, Kevin and Michelle returned to the hospital claiming initially that H.G.D. was having a stroke, then asserting that C.D.D. was also suffering from a stroke and the same asymmetrical facial features which were capable of only being seen by them.

{¶28} Based upon the foregoing, and all of the evidence presented at the adjudicatory hearing, as previously discussed, we find the juvenile court did not err in finding clear and convincing evidence that the minor children are neglected as defined in R.C. 2151.03(A)(2). There is nothing to suggest that any of the evidence is legally insufficient to support the court’s judgment or that its judgment is based on an irrational view of the evidence. Also, there is nothing to suggest that the trier of fact clearly lost its way and created a manifest miscarriage of justice in adjudicating the minor children neglected.

{¶29} With respect to dependency, R.C. 2151.04 defines the term “dependent child.” The division of the statute at issue in this case, R.C. 2151.04(C), provides a “dependent child” means any child “[w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship * * *.”

{¶30} “A finding of dependency under R.C. 2151.04 focuses on whether the child is receiving proper care and support. *In re Walling*, 1st Dist. No. C-050646, 2006-Ohio-810, ¶16, citing *In re Bibb* (1980), 70 Ohio App.2d 117, * * * (* * *). Therefore, the determination must be based on the condition or environment of the child, not the fault of the parents. *In re Bishop* (1987), 36 Ohio App.3d 123, 124, * * * (* * *); *In re Burchfield* (1988), 51 Ohio App.3d 148, 156, * * * (* * *). That being said, a court may consider a parent’s conduct insofar as it forms part of the child’s environment. See *In re Burrell* (1979), 58 Ohio St.2d 37, 39, * * * (* * *).” *State ex rel. Swanson v. Hague*, 11th Dist. No. 2009-A-0053, 2010-Ohio-4200, ¶24, quoting *In re Z.P.*, 5th Dist. No. 20008CA00209, 2009-Ohio-378, ¶17. (Parallel citations omitted.)

{¶31} PCDJFS presented sufficient evidence that Kevin and Michelle’s conduct placed the minor children in a condition or environment which justified the intervention and warranted a finding of dependency. R.C. 2151.04(C). This matter began as a result of a family home that placed the minor children at risk as well as a lack of parental supervision which ultimately led to preschool aged children having access to cranberry extract and opened pill bottles. The testimony at the adjudicatory hearing established that later visits revealed that the home appeared as though it had been hit by a tornado. Kevin and Michelle’s apartment was a “disaster” with exposed hypodermic needles, pills, pill bottles, I-V bags, and I-V fluids lying around the house. Firearms and a sword were found underneath a bunch of clothes. Also, the home had disabled smoke detectors and thermostats with exposed wires hanging from the walls.

{¶32} Paramedics and medical providers at Robinson Memorial and Akron Children’s continued care for the minor children due to the adverse effects imposed

upon them by their parents' "bizarre" behaviors. Both hospitals intervened out of concern for the minor children's well-being when they were left alone with Kevin and Michelle. Following a week-long exposure to their parents' chaotic hysterics, the minor children were treated at Rainbow Babies and Children's Hospital and The Cleveland Clinic for concerns of gastritis symptoms, given fluids, and discharged into the protective care of PCDJFS.

{¶33} Based upon the foregoing, and all of the evidence presented at the adjudicatory hearing, as previously discussed, we find the juvenile court did not err in finding clear and convincing evidence that the minor children are dependent as defined in R.C. 2151.04(C). There is nothing to suggest that any of the evidence is legally insufficient to support the court's judgment or that its judgment is based on an irrational view of the evidence. Also, there is nothing to suggest that the trier of fact clearly lost its way and created a manifest miscarriage of justice in adjudicating the minor children dependent.

{¶34} Kevin's first assignment of error is without merit.

{¶35} In his second assignment of error, Kevin contends the juvenile court abused its discretion in denying his second request to continue the adjudicatory hearing because he and Michelle were unable to attend. Kevin maintains his second request for a continuance was reasonable since the court reset the remainder of that hearing as there was insufficient time for all of the evidence to be presented. Thus, he alleges the court deprived him of his right to due process.

{¶36} "The grant or denial of a continuance is a matter that is entrusted to the broad, sound discretion of the trial judge." *DePizzo v. Stabile*, 11th Dist. No. 2006-T-

0027, 2006-Ohio-6102, ¶7, quoting *State v. Unger*, 67 Ohio St.2d 65, paragraph one of the syllabus (1981). An appellate court will not interfere unless there was a clear abuse of discretion. *DePizzo* at ¶7. An abuse of discretion is the trial court's ""failure to exercise sound, reasonable, and legal decision-making."" *Hammonds v. Eggett*, 11th Dist. No. 2010-G-2980, 2011-Ohio-6510, ¶16, quoting *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶37} ""There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied."" *DePizzo* at ¶8, quoting *Unger*, 67 Ohio St2d at 67.

{¶38} In evaluating a motion for a continuance, appellate courts should apply a balancing test, taking the following into consideration: ""the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case." *Unger* 67 Ohio St2d at 67-68.

{¶39} The record establishes that the adjudicatory hearing was originally scheduled for May 19, 2011. However, the attorneys for Kevin and Michelle requested that the hearing be continued. The court granted their request and reset the matter for May 31, 2011.

{¶40} At the beginning of the May 31, 2011 adjudicatory hearing, Kevin's attorney requested a second continuance because Kevin was not prepared to go forward. In open court, Kevin's attorney stated that he had received a call from Kevin, ten minutes before the start of the scheduled hearing, alleging that someone had just broken into his and Michelle's apartment and had stolen all of their documents that they were planning on using at the hearing.

{¶41} The court denied Kevin's second request for a continuance finding that the stated reason was "simply implausible." The court stated that it counted on Kevin's and Michelle's attorneys to be prepared for the hearing and that if their clients wanted to attend, they would have. The court further noted that two emergency room doctors, Drs. Robinson and Singer, were already inconvenienced by Kevin's and Michelle's first continuance as they were subpoenaed and present to testify at the first adjudicatory hearing originally scheduled for May 19, 2011. Thus, Drs. Robinson and Singer were called first and second to testify at the rescheduled May 31, 2011 adjudicatory hearing. After also hearing the testimony of Patrolmen Waldeck and Kaley, the court concluded that hearing because Kevin's attorney had another matter to attend to in another court.

{¶42} The continuation of the adjudicatory hearing was reset for June 14, 2011. Both Kevin and Michelle appeared at that hearing. Thus, because Kevin, who was represented by counsel at all stages of the proceedings, attended the June 14, 2011 continuation of the adjudicatory hearing, any testimony or evidence that he wished to submit could have been presented at that hearing.

{¶43} In reaching its conclusion to deny Kevin's second request for a continuance, the court considered the fact that one continuance was already requested

and received; that two professional witnesses, in particular, would have been inconvenienced by a second delay; and that the second delay, requested ten minutes prior to the start of the rescheduled adjudicatory hearing claiming a break-in and an alleged theft of unidentified documents, was not for legitimate reasons, especially in the context of all of the evidence presented. *Unger*, 67 Ohio St2d at 67-68. Therefore, the court did not abuse its discretion in denying Kevin's second request for a continuance.

{¶44} Kevin's second assignment of error is without merit.

{¶45} For the foregoing reasons, appellant's assignments of error are not well-taken. The judgment of the Portage County Court of Common Pleas, Juvenile Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.