[Cite as *In re N.G.*, 2009-Ohio-4915.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

In the Matter of:	:	
	:	
N.G.,	:	Case No. 09CA15
	:	
An Adjudicated Dependent Child.	:	
	:	DECISION AND
	:	JUDGMENT ENTRY
	:	
	:	File-stamped date: 9-11-09

APPEARANCES:

Samantha J. Fields, Ironton, Ohio, for Appellant.

J.B. Collier, Jr., Lawrence County Prosecutor, and Kevin J. Waldo, Lawrence County Assistant Prosecutor, Ironton, Ohio, for Appellee.

Kline P.J.:

{¶1} Amanda Gibbs appeals the judgment of the Juvenile Division of the Lawrence County Court of Common Pleas. Amanda is the mother of N.G., a dependent and neglected child, and the trial court granted permanent custody of N.G. to the Lawrence County Department of Job and Family Services, Children Services Division (hereinafter "Children Services"). On appeal, Amanda makes several arguments against the trial court's finding that Children Services was not required to make reasonable efforts towards the reunification of N.G. and Amanda. However, we find that all of Amanda's arguments are moot because she was sentenced to a thirty-month prison term on May 27, 2009. Therefore, even if Amanda's arguments about reunification had merit, N.G. could not be

placed with her because of R.C. 2151.414(E)(12). Accordingly, we decline to address Amanda's arguments and affirm the judgment of the trial court.

I.

{¶2} The record reveals the following facts pertinent to this appeal. On July 8, 2008, Lawrence County Sheriff's officers arrested Amanda and her husband, Richard Gibbs, for selling heroin out of a motel room in Chesapeake, Ohio. Amanda and Richard were apparently living in the motel room with N.G., their two-year old child. Upon their arrests, Amanda and Richard were immediately incarcerated. They remained incarcerated throughout the proceedings below.

{¶3} Shortly after their arrests, Amanda and Richard both pled guilty to third-degree felony drug trafficking. Amanda received a four-year prison sentence (with the possibility of judicial release to a Community Based Correctional Facility after six months). And Richard was also sentenced to four years in prison (with the possibility of judicial release to a Community Based Correctional Facility after one year).

{¶4} On July 9, 2008, Children Services filed a complaint in the Lawrence County Court of Common Pleas, Juvenile Division. In that complaint, Children Services alleged that N.G. was a dependent and neglected child. Amanda admitted to these allegations at a hearing held on August 5, 2008, and Richard admitted to the same allegations at a subsequent hearing.

{¶5} On December 15, 2008, Children Services filed a motion for permanent custody of N.G.

{¶6} At some point, Amanda received judicial release and was transferred from the Ohio Reformatory for Women to the STAR Community Based Correctional Facility (hereinafter "STAR"). Richard was also transferred to STAR approximately six or seven months into his sentence.

{¶7} On April 8 and 9, 2009, the trial court held a hearing regarding (1) Children Services' motion for permanent custody, (2) Amanda's motion for a reunification case plan, and (3) Richard's motion for a reunification case plan. Although they were incarcerated at STAR at the time, Amanda and Richard were both present for this hearing.

{¶8} In a May 6, 2009 entry, the trial court (1) denied the two reunification motions and (2) granted Children Services' motion for permanent custody.

{¶9} Amanda appeals, asserting the following two assignments of error: I. "The trial court erred by granting Children Services' request for permanent custody in the absence of reasonable efforts by the agency as required by R.C. 2151.412(C), thus denying appellant her substantive due process rights to the care, custody and control of her child." And, II. "The trial court's determination that reasonable efforts for reunification by the agency were not required is not supported by written findings of fact as mandated by R.C. 2151.419(B)(1) and is against the manifest weight of the evidence."

II.

{¶10} We will consider Amanda's two assignments of error together because they are interrelated. Under both assignments of error, Amanda argues against the trial court's finding that Children Services was not required to make

reasonable efforts towards the reunification of N.G. and Amanda. Amanda specifically contends that the trial court erred in (1) granting permanent custody of N.G. to Children Services in the absence of reasonable efforts, (2) determining that reasonable efforts were not required, and (3) failing to support its reasonable efforts determination with written findings of fact. Amanda further contends that these errors violated her due process rights to the care, custody, and control of her child.

{¶11} "A public or private child-placement agency may file a motion under R.C. 2151.413(A) to request permanent custody of a child after a court has committed the child to the temporary custody of the agency pursuant to R.C. 2151.353(A)(2)." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, at ¶22. "A trial court may grant the agency's motion for permanent custody if it determines by clear and convincing evidence that: (1) one of the four conditions outlined in R.C. 2151.414(B)(1) applies; and (2) it is in the child's best interest." *In re T.F.*, Pickaway App. No. 07CA34, 2008-Ohio-1238, at ¶9, citing R.C. 2151.414(B)(1). See, also, *In re McCain*, Vinton App. No. 06CA654, 2007-Ohio-1429, at ¶13.

{¶12} We note that a parent's "interest in the care, custody, and control of [his or her] children 'is perhaps the oldest of the fundamental liberty interests[.]'" *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, at ¶8, citing *Troxel v. Granville* (2000), 530 U.S. 57, 65. The Supreme Court of Ohio "has long held that 'parents who are suitable parents have a 'paramount' right to the custody of their minor children.'" *In re D.A.* at ¶10, citing *In re Murray* (1990), 52 Ohio St.3d 155, 157; *In re Perales* (1977), 52 Ohio St.2d 89, 97; *Clark v. Bayer* (1877), 32 Ohio St.

299, 310; *In re T.F.* at ¶11. Further, "[p]ermanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.'" *In re D.A.* at ¶10, citing *In re Hayes* (1997), 79 Ohio St.3d 46; *In re T.F.* at ¶11. As such, "parents 'must be afforded every procedural and substantive protection the law allows.'" *In re D.A.* at ¶10, citing *In re Hayes* at 48. "Consequently, when the State seeks to terminate parental custody, parents are entitled to due process guarantees under the Fourteenth Amendment to the United States Constitution, including a hearing upon adequate notice, assistance of counsel, and (under most circumstances) the right to be present at the hearing itself." *In re D.P.*, Cuyahoga App. Nos. 86271, 86272, 2006-Ohio-937, at ¶17, citing *Santosky v. Kramer* (1892), 455 U.S. 745. "'Ohio has incorporated these due process requirements into the statutes and rules governing juvenile adjudications and dispositions.'" *In re T.F.* at ¶11, quoting *In re D.P.* at ¶18.

{¶13} "Based on the constitutional implications of terminating parental rights and the importance of requiring reasonable reunification efforts that pervades federal and Ohio law, [the Supreme Court of Ohio has held] that, except for a few narrowly defined exceptions, the state must have made reasonable efforts to reunify the family prior to the termination of parental rights." *In re C.F.* at ¶21. See, also, *In re T.F.* at ¶9.

{¶14} Before addressing the substance of Amanda's arguments, we must first address a procedural issue. Namely, "[a]lthough this court's ability to take judicial notice is not unbridled, we may take judicial notice of findings and judgments as rendered in other Ohio cases." *State ex rel. Ormond v. Solon*,

Cuyahoga App. No. 92272, 2009-Ohio-1097, at ¶15, citing *Morgan v. Cincinnati* (1986), 25 Ohio St.3d 285; *In re Adoption of Lassiter* (1995), 101 Ohio App.3d 367; see, also, *State ex rel. Kolkowski v. Lake Cty. Bd. of Commrs.*, Lake App. No. 2008-L-138, 2009-Ohio-2532, at ¶38. "The Ohio Supreme Court has taken judicial notice of trial court decisions in a number of cases, including *Morgan*[.]" *State/City of Akron v. Kim*, Summit App. No. 24178, 2008-Ohio-6928, at ¶11. Accordingly, this court takes judicial notice of the following decision of the Lawrence County Court of Common Pleas in Case No. 08CR000215: that Amanda (1) violated the terms of her community control sanctions and (2) was sentenced to thirty (30) months in jail. The Lawrence County Court of Common Pleas entered this decision on May 27, 2009, and, with credit for time served, Amanda will be incarcerated until October 2011.

{¶15} Because of her incarceration, we find that all of Amanda's arguments are moot.[1] The Eleventh District Court of Appeals reached a similar conclusion in *In re P.J. and D.M.*, Ashtabula App. Nos. 2008-A-0047, 2008-A-0053, 2009-Ohio-182. In that case, the children's father claimed that an agency acted in bad faith by failing to contact him regarding a reunification case plan. However, the

[1] In addition to taking judicial notice, this court may consider the May 27, 2009 decision of the Lawrence County Court of Common Pleas for another reason. Namely, an appellate court may consider extrinsic evidence outside the record "if a later event causes the case to become moot[.]" *Sanders v. Hudson*, Richland App. No. 2008-CA-0105, 2009-Ohio-2907, at ¶3, citing *State ex rel. Cincinnati Inquirer v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, at ¶8. See, also, *Townsend v. Antioch Univ.*, Greene App. No. 2008 CA 103, 2009-Ohio-2552, at ¶8; *State v. Stacey*, Lawrence App. No. 05CA12, 2005-Ohio-5014, at ¶7, citing *Pewitt v. Superintendent, Lorain Correctional Institution* (1992), 64 Ohio St.3d 470, 472.

Eleventh District Court of Appeals held that the father's argument was moot because of R.C. 2151.414(E)(12). Id. at ¶58.

{¶16} R.C. 2151.414(E)(12) provides: "In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code 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 or should not be placed with either parent: * * * The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing." (Emphasis added.) The *In re P.J. and D.M* court found that "it is uncontested that [Father] is incarcerated and would not be available to care for the children for at least 18 months after the filing of the motion for permanent custody or the disposition hearing, pursuant to R.C. 2151.414(E)(12). As a result, [Father's bad faith] argument is moot since, even if [Father] completed the case plan, the children could not be placed with him due to his lengthy term of incarceration." *In re P.J. and D.M.* at ¶58.

{¶17} Here, we find Amanda's arguments moot for the same reasons. It is uncontested that Amanda was incarcerated at the time Children Services filed its motion for permanent custody and also at the time of the dispositional hearing. And because she will be incarcerated until October 2011, Amanda will not be available to care for N.G. for at least eighteen (18) months after the filing of the motion for permanent custody (June 15, 2010) or the dispositional hearing (October 8, 2010). Consequently, even if Amanda's arguments about reunification had merit, N.G. could not be placed with her based on the plain language of R.C. 2151.414(E)(12).

{¶18} Accordingly, we find all of Amanda's arguments moot and decline to address them. See *James A. Keller, Inc. v. Flaherty* (1991), 74 Ohio App.3d 788, 791 ("[T]here is no relief that this court could afford. * * * Any decision that this court might render has been deemed academic and ineffectual by the subsequent [events.]"); *McClead v. McClead*, Washington App. No. 06CA67, 2007-Ohio-4624, at ¶12-13. Therefore, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.