[Cite as *In re T.B.*, 2010-Ohio-2047.]

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

	:	
In re: T.B.	:	
Adjudicated Dependent Child.	:	Case No. 10CA04
	:	
	DECISION AND JUDGMENT ENTRY	
	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Sierra L. Meek, 55 West Washington Street, Nelsonville, Ohio 45764

COUNSEL FOR APPELLEE: C. David Warren, Athens County Prosecuting Attorney, and George J. Reitmeier, Athens County Assistant Prosecuting Attorney, Athens County Courthouse, 1 South Court Street, Athens, Ohio 45701

CIVIL APPEAL FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALZIED: 5-3-10

ABELE, J.

{¶ 1} This is an appeal from an Athens County Common Pleas Court, Juvenile Division, judgment that awarded Athens County Children Services (ACCS) permanent custody of T.B., born August 16, 2005.

{¶ 2} Appellant Danielle Hunter, the children's natural mother, raises the following assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT'S FINDING THAT MOTHER DEMONSTRATED A LACK OF COMMITMENT TOWARDS T.B. WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED BY FAILING TO FIND ACCS IN CONTEMPT FOR MAKING SUBSTANTIAL CHANGES TO T.B.'S CASE PLAN WITHOUT PRIOR COURT APPROVAL."

{¶ 3} On April 23, 2009, ACCS filed a complaint alleging the child to be neglected and dependent. The complaint noted that appellant had tested positive for opiates, that appellant did not have a place to live, and that ACCS had temporary custody of appellant's three older children.[1] The complaint sought permanent custody of the child. ACCS further requested emergency custody of the child. The trial court granted ACCS emergency custody and ACCS placed the child in a foster home.

{¶ 4} On July 7 and 20, 2009, the court held an adjudicatory hearing. ACCS caseworker June Safranek testified that ACCS first obtained custody of the child around April 22, 2009, when the shelter where appellant and the child had been staying, My Sister's Place, asked her to leave. Safranek further explained that ACCS had obtained temporary custody of appellant's three older children due to appellant's lack of housing, lack of employment, and concerns of substance abuse. Safranek testified that appellant continued to experience lack of housing and lack of employment while T.B. was in her

[1] ACCS sought and obtained permanent custody of appellant's three other children. We affirmed the trial court's decision. See In re B.H., Athens App. No. 09CA47, 2010-Ohio-1371.

care, and ACCS became concerned whether appellant could provide for T.B.'s basic needs, including food, shelter, and clothing.

{¶ 5} Evelyn Joyce Mullins testified that she is a member the Albany Baptist Church and volunteers her services to assist others in obtaining basic needs. Mullins explained that appellant lived with her for approximately six weeks after appellant left the shelter. Mullins stated that she requested appellant to leave after she believed that appellant had lied to her and after Mullins discovered items missing from her home. Mullins testified that she helped appellant apply for places to live and that appellant found an apartment, but she had no money to pay for it.

{¶ 6} ACCS caseworker Kira Schumm testified that appellant's case plan required her to find a stable place to live and to obtain counseling for her substance abuse and mental health issues. Schumm stated that she has not been able to verify that appellant has a place to live.

{¶ 7} Appellant testified that she obtained employment selling knives and that she had been living at a residence for about two months.

{¶ 8} At the conclusion of the hearing, the trial court found that the child to be dependent. The court found that appellant has had a lack of verifiable stable housing and income, and that appellant has shown a lack of commitment to obtaining counseling to address her substance abuse and mental health issues. The court noted that appellant recently contacted Tri-County Mental Health (TCMH) and Health Recovery Services (HRS), but only after ACCS requested permanent custody of her youngest child.

{¶ 9} On September 10, 2009, the guardian ad litem filed her report and stated that the child appears happy in his current placement. The guardian ad litem reported

that appellant interacts appropriately with the child and that the child appears happy with appellant, but that appellant has not obtained employment and does not have adequate resources to provide for her child. Furthermore, appellant does not have a place to live and has not completed her substance abuse treatment. The guardian ad litem noted that a strong bond exists between appellant and the child, but asserted that appellant has not been able to provide a safe, permanent home or to obtain income to provide for the child's basic needs. Thus, the guardian ad litem thus recommended that the court award permanent custody to ACCS.

{¶ 10} On September 15, 2009, the court held a dispositional hearing. Before the hearing began, the court noted that appellant did not appear. At the hearing, HRS counselor Donna Johnson testified that she performed an assessment of appellant on April 28, 2009, upon ACCS's referral. Johnson recommended that appellant enter individual and group counseling. Johnson stated that of the six individual sessions to be completed over the course of six months, appellant attended two in May and one in June. Johnson also testified that appellant attended three group sessions. Johnson explained that appellant did not successfully complete the program because appellant moved to Perry County. Johnson stated that she closed appellant's file and made a referral to Perry County Behavioral Health Center.

{¶ 11} TCMH counselor Bonnie de Lange testified that she interviewed appellant on May 24, 2009, but appellant did not attend the next scheduled appointment or make any subsequent contact with TCMH.

{¶ 12} The guardian ad litem testified and recommended that the trial court award ACCS permanent custody of T.B. The guardian ad litem advised the court of the strong

bond appellant shares with the child, but stated that appellant failed to obtain stable housing or employment. The guardian ad litem noted that appellant has made some attempts to comply with the case plan, but asserts that her efforts have been "minimal."

{¶ 13} On November 12, 2009, ACCS filed its sixth amended case plan. This plan sought to place the child in a potential adoptive foster home along with his three older siblings. ACCS inadvertently failed to serve a copy of this case plan upon appellant. When appellant learned of the amended case plan, she filed an objection and filed a motion to hold ACCS in contempt for moving the child to the new foster home before the court approved the amended case plan.

{¶ 14} On December 15, 2009, the trial court held a hearing regarding appellant's motion for contempt. The court denied appellant's request to hold ACCS in contempt.

{¶ 15} On December 28, 2009, the trial court awarded ACCS permanent custody of the child. The court observed that appellant failed to appear for the September 15, 2009 dispositional hearing and did not offer any reason for her absence. The court reviewed the relevant best interest factors and found that awarding ACCS permanent custody would serve the child's best interest.

{¶ 16} In considering the child's interactions and interrelationships, the court explained:

> "T.B.'s date of birth is 8-16-05. He has three older half-siblings, all in the custody of ACCS. T.B.'s father has no contact and no relationship with the child. Mother has had moments where she interacts well with this child generally. While mother's three other children were in the temporary custody of ACCS and while mother was visiting those children at the agency, she typically brought T.B. to those visits. Mother often demonstrated difficulty in parenting and controlling her children and an unwillingness to accept advice in that regard."

{¶ 17} The court next considered the child's wishes and stated:

> "T.B. is four years old and appears to love and enjoy being with his mother. He becomes upset when mother fails to appear for scheduled visits. His guardian ad litem has observed some good and appropriate interactions between mother and this child. Counsel was appointed to represent the child. This child lacks sufficient maturity to give any real weight to this issue."

{¶ 18} The court also examined the child's custodial history and explained:

> "Before coming into the emergency custody of ACCS in April 2009, T.B. was in his mother's custody. His three older half-siblings were in the custody of ACCS, and the agency had a voluntary arrangement with mother regarding T.B. At the time emergency custody was granted, mother had been asked to leave a local shelter for women escaping domestic violence due to perceived misconduct at the shelter. Mother has been homeless through most of the case history. Between September 2007 and July 2008, mother moved twenty times. She has also lied about her living arrangements and has significant issues of credibility generally."

{¶ 19} The court next reviewed the child's need for a legally secure placement and stated: "This child needs and deserves a legally secure placement that can only be achieved with a grant of permanent custody to ACCS and ultimately, adoption." The court found that R.C. 2151.414(E)(10) applies because the father has abandoned the child.[2]

{¶ 20} Additionally, the trial court determined that under R.C. 2151.414(E)(4) and (10), the child cannot or should not be placed with either parent within a reasonable time. The court stated:

> "Regarding R.C. 2151.414(E)(4), both parents have demonstrated a lack of commitment toward this child. Father has abandoned this child and

[2] The father has not participated at any point throughout the trial court proceedings.

> provides no support of any fashion. Mother has no suitable or stable housing. In the last two years, mother has worked three weeks. Mother's lack of employment, income, transportation and housing is an ongoing issue and she has failed to address this situation in any meaningful way.
>
> Mother has mental health diagnoses of Major Depression, Anxiety Disorder, and Opiate Abuse. She made only minimal efforts to comply with recommended mental health and substance abuse treatments. Her unwillingness or inability to address these many problems have prevented her from establishing an adequate, permanent home for this child."

{¶ 21} The court thus awarded ACCS permanent custody of the child. This appeal followed.

I

{¶ 22} In her first assignment of error, appellant asserts that the trial court's finding that she demonstrated a lack of commitment towards T.B. is against the manifest weight of the evidence and contrary to law. She asserts that the evidence shows that she supported, visited, and communicated with the child and that she was willing to obtain adequate housing for the child.

A

STANDARD OF REVIEW

{¶ 23} Generally, an appellate court will not reverse a trial court's permanent custody decision if some competent and credible evidence supports the judgment. In re Perry, Vinton App. Nos. 06CA648 and 06CA649, 2006-Ohio-6128, at ¶40, citing State v. Schiebel (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54. Thus, our review of a trial court's permanent custody decision is deferential. See In re Hilyard, Vinton App. Nos. 05CA600, 05CA601, 05CA602, 05CA603, 05CA604, 05CA606, 05CA607, 05CA608, 05CA609, at ¶17. Moreover, "an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the

findings of fact and conclusion of law." Schiebel, 55 Ohio St.3d at 74. Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273: "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." Davis v. Flickinger (1997), 77 Ohio St.3d 415, 419, 674 N.E.2d 1159; see, also, In re Christian, Athens App. No. 04CA10, 2004-Ohio-3146.

B

STANDARD FOR GRANTING PERMANENT CUSTODY

{¶ 24} A trial court may not grant a permanent custody motion absent clear and convincing evidence to support the judgment. The Ohio Supreme Court has defined "clear and convincing evidence" as:

> "The measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal."

{¶ 25} In re Estate of Haynes (1986), 25 Ohio St.3d 101, 103-04, 495 N.E.2d 23; see, also, Schiebel, 55 Ohio St.3d at 74. In reviewing whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the

requisite degree of proof." Schiebel, 55 Ohio St.3d at 74.

C

PERMANENT CUSTODY PRINCIPLES

{¶ 26} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children. Santosky v. Kramer (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599; In re Murray (1990), 52 Ohio St.3d 155, 156, 556 N.E.2d 1169; see, also, In re D.A., 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829. A parent's rights, however, are not absolute. See D.A. at ¶11. Rather, "'it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the pole star or controlling principle to be observed.'" In re Cunningham (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (quoting In re R.J.C. (Fla.App.1974), 300 So.2d 54, 58). Thus, the state may terminate parental rights when a child's best interest demands such termination. D.A. at ¶11.

{¶ 27} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. See R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying principles of R.C. Chapter 2151:

> (A) To provide for the care, protection, and mental and physical development of children * * *;
> * * *

> (B) To achieve the foregoing purpose[ ], whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety.

D

PERMANENT CUSTODY FRAMEWORK

{¶ 28} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that:

> (a) The child is not abandoned or orphaned or 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 ending on or after March 18, 1999, 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.
> (b) The child is abandoned.
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
> (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 ending on or after March 18, 1999.

{¶ 29} Thus, before a trial court may award a children services agency permanent custody, it must find: (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies; and (2) that awarding the children services agency permanent custody would further the child's best interests.

E

R.C. 2151.414(B)(1)

{¶ 30} In the case at bar, the trial court determined that R.C. 2151.414(B)(1)(a) applied, in that the child cannot or should not be placed with either parent within a

reasonable time. In reaching its decision, the court examined the factors contained in R.C. 2151.414(E)(4) and (10). Appellant challenges the court's finding that R.C. 2151.414(E)(4) applies.

{¶ 31} R.C. 2151.414(E) requires the trial court to consider "all relevant evidence" and sets forth the factors a trial court must consider in determining whether a child cannot or should not be placed with either parent within a reasonable time. See R.C. 2151.414(B)(1)(a). If a court finds, by clear and convincing evidence, the existence of any one of the enumerated factors, "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." See, e.g., In re William S. (1996), 75 Ohio St.3d 95, 661 N.E.2d 738; In re Hurlow (Sept. 21, 1998), Gallia App. No. 98CA6; In re Butcher (Apr. 10, 1991), Athens App. No. 1470. As relevant in the case sub judice, R.C. 2151.414(E)(4) directs the court to find that the child cannot or should not be placed with either parent within a reasonable time if "[t]he 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."

{¶ 32} In the case at bar, we believe that the evidence supports the trial court's R.C. 2151.414(E)(4) finding. ACCS's case plan required appellant to undergo substance abuse and mental health counseling. She failed to fully comply with that requirement. Even if appellant attempted counseling, she did not complete either substance abuse counseling or mental health counseling. The court found that her attempts to comply were minimal and brought about only after ACCS sought permanent custody of her fourth child. Furthermore, some evidence exists that appellant was

deceptive in her attempts to obtain adequate housing, which the court could conclude demonstrated an unwillingness. ACCS caseworkers testified that appellant would give them an address where she was residing, but they were never able to verify her residence. Appellant may have had a residence for a short period of time, but did not maintain any permanent residence. Some evidence exists that she lived in approximately twenty-three different locations during her involvement with ACCS. ACCS's case plan also required appellant to obtain employment so that she could provide for the child's basic needs. The evidence amply demonstrates that she did not obtain any meaningful employment so that she could to provide for the child's basic needs. Even if appellant was willing to find a physical residence for the child, her other actions demonstrate her lack of commitment and her unwillingness to provide an adequate permanent home for the child. Significantly, even though appellant attempted to locate a place to live, she never obtained any means by which she could actually afford a place to live. We believe that an "adequate permanent home" is more than a physical building in which to live. Appellant, however, was unwilling to comply with the case plan requirements to obtain counseling and to obtain income to provide for the child's basic needs. Her unwillingness to obtain income also demonstrates an unwillingness to provide an adequate permanent home for the child. We further note that appellant did not appear at the permanent custody hearing. Thus, evidence adduced at the hearing supports the trial court's R.C. 2151.414(E)(4) finding. Cf. In re Carlos R., Lucas App. No. L-07-1194, 2007-Ohio-6358 (concluding that father's unwillingness to obtain income or employment to be able to afford adequate permanent home satisfied R.C. 2151.414(E)(4)).

{¶ 33} We recognize that the evidence shows that appellant and the child share a strong bond and that appellant exercised appropriate visitation with the child. This fact makes the result extremely difficult. Her willingness, however, to visit, to support, and to communicate with the child does not negate her unwillingness to provide an adequate permanent home for the child. Appellant's unwillingness to provide an adequate permanent home for the child is demonstrated through her inaction in obtaining the recommended counseling and in finding a source of income to be able to afford adequate housing, food, and clothing for the child.

E

BEST INTERESTS

{¶ 34} Appellant does not raise any argument regarding the child's best interest. Therefore, we need not address this aspect of the trial court's decision.

{¶ 35} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

{¶ 36} In her second assignment of error, appellant asserts that the trial court abused its discretion by failing to find ACCS in contempt for implementing an amended case plan without prior court approval.

{¶ 37} Initially, we note that a trial court possesses broad discretion when considering a contempt motion. State ex rel. Ventrone v. Birkel (1981) 65 Ohio St.2d 10, 11, 417 N.E.2d 1249. Thus, absent an abuse of discretion, an appellate court will uphold a trial court's contempt decision. Welch v. Muir, Washington App. No. 08CA32, 2009-Ohio-3575. An abuse of discretion constitutes more than an error of law or

judgment; rather, it implies the court's attitude was unreasonable, arbitrary or unconscionable. See, e.g., Landis v. Grange Mut. Ins. Co. (1998), 82 Ohio St.3d 339, 342, 695 N.E.2d 1140; Malone v. Courtyard by Marriott L.P. (1996), 74 Ohio St.3d 440, 448, 659 N.E.2d 1242. An appellate court may not find an abuse of discretion simply by substituting its judgment for that of the trial court. See State ex rel. Duncan v. Chippewa Twp. Trustees (1995), 73 Ohio St.3d 728, 732, 654 N.E.2d 1254; In re Jane Doe 1 (1991), 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181. Instead, to establish an abuse of discretion, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, and not the exercise of reason but instead passion or bias. Nakoff v. Fairview Gen. Hosp. (1996), 75 Ohio St.3d 254, 256, 662 N.E.2d 1; see, also, Bragg v. Hatfield, Vinton App. No. 02CA567, 2003-Ohio-1441, at ¶22.

{¶ 38} "Contempt of court" is the disobedience or disregard of a court order or a command of judicial authority. Daniels v. Adkins (June 3, 1994), Ross App. No. 93CA1988; Johnson v. Morris (Dec. 19, 1993), Ross App. No. 93CA1969. It involves conduct that engenders disrespect for the administration of justice or which tends to embarrass, impede or disturb a court in the performance of its function. Denovchek v. Trumbull Cty. Bd. of Commrs. (1988), 36 Ohio St.3d 14, 15, 520 N.E.2d 1362; Windham Bank v. Tomaszczyk (1971), 27 Ohio St.2d 55, 271 N.E.2d 815, at paragraph one of the syllabus. Proceedings in contempt are intended to uphold and ensure the effective administration of justice, secure the dignity of the court and affirm the supremacy of law. See Cramer v. Petrie (1994), 70 Ohio St.3d 131, 133, 637 N.E.2d 882. The power of the common pleas courts to punish contemptuous conduct derives from its inherent authority,

Burt v. Dodge (1992), 65 Ohio St.3d 34, 35, 599 N.E.2d 693; Zakany v. Zakany (1984), 9 Ohio St.3d 192, 459 N.E.2d 870, syllabus, as well as statute. See, e.g., R.C. 2705.01 and 2705.02.

{¶ 39} A distinction exists between criminal and civil contempt. Criminal contempt proceedings vindicate the authority of the legal system and punish the party who offends the court. Scherer v. Scherer (1991), 72 Ohio App.3d 211, 214, 594 N.E.2d 150; In re Skinner (Mar. 22, 1994), Adams App. No. 93CA547. The sanction imposed for criminal contempt operates as a punishment for the completed act of disobedience. Brown v. Executive 200, Inc. (1980), 64 Ohio St.2d 250, 254, 416 N.E.2d 610; ConTex, Inc. v. Consol. Technologies, Inc. (1988), 40 Ohio App.3d 94, 95, 531 N.E.2d 1353; Schrader v. Huff (1983), 8 Ohio App.3d 111, 112, 456 N.E.2d 587.

{¶ 40} Civil contempt exists when a party fails to do something ordered by a court for the benefit of an opposing party. Pedone v. Pedone (1983), 11 Ohio App.3d 164, 165, 463 N.E.2d 656; Beach v. Beach (1955), 99 Ohio App. 428, 431, 134 N.E.2d 162. The punishment is remedial, or coercive, in civil contempt. State ex rel. Henneke v. Davis (1993), 66 Ohio St.3d 119, 120, 609 N.E.2d 544. In other words, civil contempt is intended to enforce compliance with a court's orders. A finding of civil contempt must be supported by clear and convincing evidence. See Brown v. Executive 200, Inc. (1980), 64 Ohio St.2d 250, 253, 416 N.E.2d 610; see, also, Carroll v. Detty (1996), 113 Ohio App.3d 708, 711, 681 N.E.2d 1383.

{¶ 41} R.C. 2151.412(E)(1) permits a trial court to enter a contempt finding against a party who fails to comply with a case plan. The statute provides: "A party that fails to comply with the terms of [a] journalized case plan may be held in contempt of court."

{¶ 42} R.C. 2151.412(E)(2) authorizes any party to "propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party." The statute further outlines the procedure to follow when a party proposes a substantive change to a case plan:

> * * * * A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change.
>
> (a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.
>
> (b) If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (E)(2) of this section, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

{¶ 43} In the case at bar, appellant sought to hold ACCS in contempt for implementing a proposed substantive case plan change without prior court approval. The evidence presented at the contempt hearing shows that ACCS started planning to move the child at the end of October, and had advised the child and his siblings that they would be placed in the same home. ACCS did attempt to contact appellant to discuss

the proposed change, but had not been able to locate appellant. On November 12, 2009, ACCS filed the proposed amended case plan. Appellant did not receive proper service of the proposed change in T.B.'s living arrangements, but became aware of the proposed change. On November 20, 2009, appellant's counsel spoke with ACCS's attorney who indicated that ACCS would place the child in the new foster home "as a visit until the court decided otherwise." The attorneys met with the trial court off-the-record on November 24, 2009, and the court advised ACCS to leave the child in the new foster home until the court could hold an objection hearing.

{¶ 44} After the trial court held the combined contempt-objection hearing, it declined to find ACCS in contempt. The court, however, warned ACCS to exercise more caution when submitting and proposing case plan amendments.

{¶ 45} Based upon our review of the contempt hearing, we cannot conclude that the trial court abused its discretion. ACCS's failure to give appellant proper notice of the proposed amendment was unintentional. Furthermore, even though ACCS's transfer of the child to a new home occurred without prior court approval, the trial court was not required to find ACCS in contempt. The court considered the unique factual circumstances involved and exercised its discretion to decline to enter a contempt finding. We find nothing in the record to show that the court exercised its discretion in an unreasonable, unconscionable, or arbitrary manner.

{¶ 46} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant 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 Athens County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

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

McFarland, P.J. & Harsha, J,: Concur in Judgment & Opinion
For the Court

BY: _____
Peter B. Abele, 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.