

OHIO COURT OF APPEALS, THIRD APPELLATE DISTRICT, SENECA  
COUNTY

In re G.R.

2022-Ohio-3779 (Ohio Ct. App. 3d Dist. 2022) · No. 13-22-03 · Decided October 24, 2022

SUMMARY

The Ohio Third District Court of Appeals affirmed a juvenile court judgment finding G.R. to be an abused, neglected, and dependent child and placing the child in the temporary custody of the Seneca County Department of Job and Family Services. The court rejected challenges concerning statutory protection for mothers participating in drug treatment, denial of a continuance, admission of evidence, and the sufficiency and weight of the evidence. The opinion also addressed authentication of toxicology evidence and alleged discovery violations.

CASE DETAILS

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| COURT                 | Ohio Court of Appeals, Third Appellate District, Seneca County                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Willamowski, J.; Zimmerman, P.J.; Miller, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | October 24, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DOCKET                | 13-22-03                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | The parents appealed from a juvenile court judgment adjudicating G.R. an abused, neglected, and dependent child and placing G.R. in the temporary custody of the Seneca County Department of Job & Family Services.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| STANDARD OF REVIEW    | Denial of a continuance is reviewed for abuse of discretion. Admission or exclusion of evidence is reviewed for abuse of discretion and will be upheld absent an effect on a substantial right or inconsistency with substantial justice. Manifest-weight challenges are reviewed by examining the entire record, weighing the evidence and reasonable inferences, considering witness credibility, and determining whether the trial court clearly lost its way and created a manifest miscarriage of justice. Ineffective-assistance claims require proof of a substantial violation of counsel's duties and resulting prejudice. |
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| <b>PRECEDENTIAL VALUE</b> | Published Ohio Court of Appeals opinion; precedential within the applicable jurisdiction subject to Ohio law governing publication and precedential effect. |
| <b>PARTIES</b>            | Kimberly W., James R. v. Seneca County Department of Job & Family Services                                                                                  |

## TOPICS

parental rights family law procedure appellate procedure evidence standard of review

## PRACTICE AREAS

juvenile law child welfare family law appellate procedure evidence

## QUESTIONS PRESENTED

1. Whether the juvenile court was required to dismiss the complaint or hold it in abeyance under R.C. 2151.26 because Kimberly had enrolled in a treatment program and received prenatal care.
2. Whether the juvenile court abused its discretion by denying Kimberly's motion for a continuance.
3. Whether the juvenile court abused its discretion by admitting activity logs and a toxicology report that the Agency had not provided before the first adjudication hearing.
4. Whether the adjudications that G.R. was dependent, abused, and neglected were against the manifest weight of the evidence.
5. Whether James was denied the effective assistance of counsel by counsel's failure to renew the continuance request and object to remote participation during the COVID-19 quarantine.

## HOLDINGS

1. R.C. 2151.26(B) does not prohibit the Agency from filing a complaint concerning G.R. because Kimberly failed to satisfy all required conditions: although she enrolled in treatment before the twentieth week of pregnancy, she was not compliant with or progressing in the program and failed to maintain regularly scheduled prenatal appointments and follow prenatal-care recommendations.
2. The juvenile court did not abuse its discretion by denying Kimberly's motion for a continuance.
3. The juvenile court did not abuse its discretion by admitting the Agency's activity logs after counsel had an opportunity to review them during the period between hearings.
4. The toxicology report was properly authenticated, and any error in its admission would in any event have been harmless.
5. The adjudication that G.R. was a dependent child was not against the manifest weight of the evidence.
6. The adjudication that G.R. was an abused child was not against the manifest weight of the evidence.
7. The adjudication that G.R. was a neglected child was not against the manifest weight of the evidence.
8. James was not denied effective assistance of counsel.

## KEY QUOTATIONS

*“The appellant bears the burden of producing an adequate record on appeal, including any transcript required to evaluate the assignments of error.” (¶ 16)*

*“Continuances shall be granted only when imperative to secure fair treatment for the parties.” (¶ 18)*

*“When a newborn child's toxicology screen yields a positive result for an illegal drug due to prenatal maternal drug abuse, the newborn is, for purposes of R.C. 2151.031(D), per se an abused child.” (¶ 30)*

*“A trial court may limit the face-to-face aspect of the hearing to prevent the spread of COVID-19.” (¶ 35)*

## FACTUAL BACKGROUND

G.R. was born in September 2021, and both G.R. and Kimberly tested positive for methamphetamine-related substances; G.R. subsequently exhibited neonatal abstinence symptoms, feeding problems, tremors, and developmental concerns. Kimberly admitted using methamphetamine during pregnancy, and the parents had a prior history with the Agency involving the removal and dependency adjudication of an older child based on substance-abuse and related concerns. The parents had not resolved the conditions underlying the prior removal, had limited visitation with G.R., and the GAL and Agency presented evidence that the home and the parents' circumstances were not adequate for G.R.'s needs.

## PROCEDURAL HISTORY

The Agency filed a complaint and obtained an ex parte shelter-care order shortly after G.R.'s birth. After a probable-cause hearing, the juvenile court continued temporary custody, denied Kimberly's motion to dismiss or hold the complaint in abeyance and her motion for a continuance, and conducted a three-day adjudication hearing. On February 7, 2022, the juvenile court found G.R. abused, neglected, and dependent and granted the Agency temporary custody. Kimberly and James separately appealed, and the appellate court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- In re Predmore, 187 Ohio App.3d 100, 2010-Ohio-1626, ¶ 33, 931 N.E.2d 181 (3d Dist.)
- In re Distafano, 3d Dist. Seneca No. 13-06-14, 2006-Ohio-4430, ¶ 11
- In re Miller, 3d Dist. Auglaize No. 2-04-02, 2004-Ohio-3023, ¶ 7
- In re J.E., 3d Dist. Marion No. 9-17-07, 2017-Ohio-8272, ¶ 12, 100 N.E.3d 151
- In re J.D., 3d Dist. Hancock No. 5-10-34, 2011-Ohio-1458, ¶ 45
- In re M.B., 4th Dist. Pike No. 18CA888, 2018-Ohio-3778, ¶ 21
- Beard v. Meridia Huron Hosp., 106 Ohio St.3d 237, 2005-Ohio-4787, ¶ 20, 834 N.E.2d 323
- State v. Joseph, 73 Ohio St.3d 450, 458, 1995-Ohio-288, 653 N.E.2d 285
- State v. Mendoza, 137 Ohio App.3d 336, 738 N.E.2d 822 (3d Dist.)

- State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997)
- In re S.L., 3d Dist. Union Nos. 14-15-07, 14-15-08, 2016-Ohio-5000, ¶ 43, 56 N.E.3d 1026
- In re Baby Boy Blackshear, 90 Ohio St.3d 197, 2000-Ohio-173, 736 N.E.2d 462
- In re Barnhart, 4th Dist. Athens No. 05CA8, 2005-Ohio-2692
- State v. Hester, 45 Ohio St.2d 71, 74 O.O.2d 156, 341 N.E.2d 304 (1976)
- State v. Lytle, 48 Ohio St.2d 391, 396-397, 2 O.O.3d 495, 498, 358 N.E.2d 623, 627 (1976)
- Vaughn v. Maxwell, 2 Ohio St.2d 299, 31 O.O.2d 567, 209 N.E.2d 164 (1965)
- State v. Jackson, 64 Ohio St.2d 107, 110-111, 18 O.O.3d 348, 351, 413 N.E.2d 819, 822
- State v. Calhoun, 86 Ohio St.3d 279, 289, 1999-Ohio-102, 714 N.E.2d 905
- State v. Walker, 2016-Ohio-3499, 66 N.E.3d 349, ¶ 20
- State v. Conway, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 95
- State v. Montgomery, 148 Ohio St.3d 347, 2016-Ohio-5487, 71 N.E.3d 180
- Lockhart v. Fretwell, 506 U.S. 364, 369, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993)
- State v. Banks, 1st Dist. Hamilton No. C-200395, 2021-Ohio-4330
- In re R.R., 5th Dist. Stark No. 2021CA00011, 2021-Ohio-2369, ¶ 17
- In re Disqualification of Fleegle, 161 Ohio St.3d 1263, 2020-Ohio-5636, 163 N.E.3d 609, ¶ 8