

[Cite as *In re D.A.*, 2010-Ohio-5618.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95188

**IN RE: D.A.
A Minor Child**

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 08900441

BEFORE: Jones, J., Kilbane, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: November 18, 2010

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LARRY A. JONES, J.:

{¶ 1} Plaintiff-appellant, Cuyahoga County Department of Children and Family Services (“CCDCFS”) and guardian ad litem-appellant, Suzanne Adrain-Piccorelli (“GAL”), appeal the trial court’s denial of permanent custody to the agency and the granting of legal custody to defendant-appellee, Dean Allen (“father”). Finding merit to the appeal, we vacate the trial court’s order and award permanent custody of “D.A.”¹ to CCDCFS.

¹ We use the child’s initials in accordance with this court’s long standing policy not to identify juveniles in parental rights cases.

{¶ 2} D.A. was born January 16, 2008, to the father and defendant-appellee, Sabrina Allen (“mother”). When the mother was pregnant with D.A., she and the father got married. Both parents were homeless at the time and living apart when D.A. was born. D.A. was the eleventh child born to the mother, who had lost custody to all of her other children due to her untreated mental health issues and poor parenting skills. CCDCFS immediately moved for emergency temporary custody. The court adjudicated D.A. a dependent child and committed him to the temporary custody of the agency.

{¶ 3} CCDCFS developed a caseplan for the mother and father with the goal of reunifying D.A. with them. In August 2008, CCDCFS moved to modify temporary custody to permanent custody because the parents were refusing to comply with their caseplan.

{¶ 4} In March 2009, the trial court held a hearing on the motion for permanent custody. The caseworker testified that the parents both had felony records, had refused all services, had moved in together but refused access to the agency or the GAL, the mother had intended to be the primary caregiver for D.A., the parents denied that the mother had any mental health issues, and the parents were both unemployed and had no verifiable source of income.

{¶ 5} The father testified that he had obtained stable housing and had invited the social worker to visit the house. He testified he was working odd jobs and had enough income to feed his family and pay rent.

{¶ 6} The GAL recommended that it would be in the best interest of the child if permanent custody was granted to the agency due to mother's inability to parent, her history with the agency, and the parents' inability to take responsibility for or understand why D.A. had been removed from their care. The GAL also shared that she had "serious concerns for the safety of this young child."

{¶ 7} A clinical psychologist from the court psychiatric clinic testified that the mother had "unstable mood and inappropriate, intense anger with a significant tendency to deny responsibility and blame others." The psychologist concluded that the mother's mental health issues, coupled with her unwillingness to participate in services, would prevent her from successfully parenting D.A.

{¶ 8} Notwithstanding this testimony, the trial court determined that legal custody of D.A. should be awarded to the father and found that the father had "substantially remedied the conditions causing the child to be placed outside the child's home." The court admitted that the mother had not substantially remedied the conditions causing the child to be placed outside the child's home and also found that "[t]he father is *unwilling* to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or mental neglect." (Emphasis added.)

{¶ 9} The trial court delayed the date custody was to be transferred to the father and amended the caseplan to include transitional services, extended visitation with overnight visitation following a home investigation by the caseworker and GAL, participation by the father in services, enrollment for the

child in protective daycare, and a requirement that the parents provide verification of employment or income sources, a housing lease, and utility payments.

{¶ 10} The court then continued the case for three months for a custody review hearing to see if the parents complied with the court's orders and to determine if the court should impose protective supervision on the family.

{¶ 11} Two months later, CCDCFS moved to stop the transfer of custody by filing a motion for temporary custody. At the hearing on the agency's motion for temporary custody, the agency alleged that the parents were behind on rent and faced eviction; the parents' apartment had no heat, stove, or refrigerator; the father was only working four to ten hours a week at a seasonal job; the mother intended to care for the child instead of placing him in protective day care; the parents had missed four out of seven visits with D.A.; and the family was again refusing all services.

{¶ 12} At a July 2009 pre-trial on the motion for temporary custody, the parents admitted to the allegations contained in the agency's motion and the court granted the agency's motion. The trial court continued the hearing until January 2010 to allow the parents another opportunity to comply with the caseplan and obtain proper housing.

{¶ 13} In December 2009, the agency filed its second motion for permanent custody as D.A. had been in agency custody for over twenty-two months. See R.C. 2151.414(B)(1)(d). At the time of the filing, the parents were again

homeless and residing in separate shelters; they also continued to refuse services.

{¶ 14} The trial court held a pretrial on the motion for permanent custody in February 2010 and learned that both the mother and father were still unemployed and homeless.

{¶ 15} In April 2010, trial on the motion for permanent custody commenced.

{¶ 16} At trial, the parties stipulated to the admission of the mother's 2008 psychological report, which found that her significant mental health issues, combined with her unwillingness to participate in mental health treatment would prevent her from being able to successfully parent a child. The report pointed to several factors that showed a poor prognosis for the mother's ability to raise D.A., including her inappropriate and intense anger during the interview, refusal to accept responsibility for her children being removed from her care, and a tendency to blame others for her actions. The psychologist also noted that the mother described her children as being "replaceable" and had characteristics similar to an active child abuser. The report concluded that the mother should not regain custody of D.A. or any of her other children at "any time in the future."

{¶ 17} An employee of the county-funded Passages Job Readiness Program testified that the father had completed a job readiness program but the employee had been unable to follow-up with the father due to the father's transient situation.

{¶ 18} The father's case manager from North Point Transitional Housing testified that he tried to assist the father in finding employment but the father "exhibited a lack of motivation" towards finding a job. He further stated that the father was terminated from the program because he did not find employment. The caseworker testified that he referred the father for a mental health assessment because the father stated he was depressed. The caseworker admitted that he did not recommend any additional mental health services to the father because all of the services were fee-based.

{¶ 19} The social worker, who had been recently assigned to the case due to the father's inability to get along with the original social worker, testified that she had difficulty engaging the family in services and told the court that the parents would not communicate with her or follow through with caseplan objectives. She also testified that the parents had demonstrated anger towards the agency and demanded CCDCFS pay them if the agency was going to have custody of D.A. The social worker told the court that the mother intended on being the child's primary caretaker while the father worked. The social worker testified that she had not had any contact with the family since January 2010 due to the parents' refusal to communicate with her, and she had not been able to verify if the parents had suitable housing.

{¶ 20} The social worker further testified that the father's attorney had informed her just that day that the mother and father had secured housing and employment, so she (the social worker) had not yet visited the house or

completed a home study. When asked about the permanency plan should the court grant permanent custody of D.A. to the agency, the social worker replied that the foster mother, a paternal cousin, was willing to adopt the child. The foster mother preferred to adopt D.A. over receiving legal custody of him to provide the child with a permanent home. On cross-examination, the social worker admitted that she did not provide more than referrals for services to the father, but explained that was because he either missed appointments or indicated he did not want the agency involved.

{¶ 21} The father testified and accused the trial court of unfairly discriminating against him based on the actions of Ronald Harges, who was the biological father of one of D.A.'s siblings. He accused the agency of mishandling his case and the social workers of lying about him. He also stated that he had found new housing. He threatened to call the police if anyone tried to come near his house. He showed the trial court an unsigned lease, one-month's worth of pay stubs totaling \$280.89, and admitted he was working part-time for the first time in a year. He stated his relative would watch the child if he had to work and that he knew that his wife was not allowed to watch D.A. alone. He told the court that he would be the main one taking care of D.A. and his wife would just give him a "helping hand." He admitted that he was uncooperative with agency social workers and stated it was because they had not helped him throughout the case.

{¶ 22} The GAL recommended that the trial court grant permanent custody of the child to CCDCFS. The GAL noted that the child had a strong bond with

his foster mother. She told the court she had concerns about the parents' ability to maintain housing and employment and noted that the foster mother was amenable to adopting the child.

{¶ 23} After hearing all the evidence, the trial court continued the trial until May 2010. When the parties reconvened in May, and before inquiring as to the status of the parents' housing or employment, the trial court stated that it was denying the agency's motion for permanent custody and granting legal custody of D.A. to his father. Only after stating its ruling did the court inquire whether the father had housing, employment, and provisions for the child. The father told the court he would have to renegotiate his lease to include D.A. and had not yet secured furniture or provisions for the child. He said he would get paid in about a week, but had to use that money to pay rent. He told the court the next paycheck would be used to get necessary provisions for the child.

{¶ 24} The agency asked the court to stay its order to allow the agency time to approve the home and allow the father to secure basic items for his son. The court denied the request.

{¶ 25} The trial court issued its written findings, finding that it was in D.A.'s best interest for legal custody to be awarded to the father. The court found that the father had substantially remedied the conditions causing the child to be placed outside the child's home; the mother had had rights terminated with respect to a sibling but she could provide a legally secure permanent placement through the child's father; the parents demonstrated a commitment to the child by

regularly communicating and visiting with him; the mother repeatedly failed to follow the recommendations of the evaluators and services set forth in the caseplan; the mother maintained a stable relationship with the father; the mother and the father remain committed to one another and to the child; the parents continued to seek housing, and the mother had obtained part-time seasonal employment.

{¶ 26} CCDCFS filed a timely notice of appeal, raising the following assignment of error for our review:

{¶ 27} “1. The decision of the trial court is not supported by sufficient competent, credible evidence.”

{¶ 28} CCDCFS also filed a motion to stay the execution of the trial court’s order, which we granted. We ordered the child to remain in his foster home until further order of the court.

Finality

{¶ 29} We first address the issue of whether the trial court’s order is a final, appealable order. The mother, in her separate appellee brief, argues that the trial court’s denial of permanent custody and grant of legal custody to the father is not a final, appealable order. We disagree.

{¶ 30} R.C. 2501.02 defines the jurisdiction of the courts: “In addition to the original jurisdiction conferred by Section 3 of Article IV, Ohio Constitution, the court shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record

inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.”

{¶ 31} Both grants of jurisdiction to the courts require that a trial court’s order be a final order: “As a result, “[i]t is well-established that an order must be final before it can be reviewed by an appellate court. If an order is not final, then an appellate court has no jurisdiction.” *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519, ¶14, quoting *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266.

{¶ 32} For a court order to be a final, appealable order, the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B), must be met. *Gehm* at ¶15. R.C. 2505.02 statutorily defines a “final order,” and in this case, subsections (A) and (B) are relevant. Those subsections provide:

“(A) As used in this section:

“(1) ‘Substantial right’ means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

“(2) ‘Special proceeding’ means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

“ * * *

“(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

“(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

“(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.”

{¶ 33} In *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, the Ohio Supreme Court held that “[a] trial court’s order denying an agency’s motion to modify temporary custody to permanent custody and continuing temporary custody does not qualify as a final, appealable order under either R.C. 2505.02(B)(1) or (2).” *Id.* at 90.

{¶ 34} The Court reasoned that “the continuation of the agency’s temporary custody does not determine the outcome of the action for neglect and dependency. Instead, all parties remain subject to further court order during the temporary-custody phase. A juvenile court has several ultimate dispositional options pursuant to R.C. 2151.415(A), and ordering the continuation of temporary custody does not preclude the juvenile court from exercising any of these options.” *Id.*

{¶ 35} This case is distinguishable from *In re Adams*, however, because in this case the trial court did not order the continuation of temporary custody. The court awarded legal custody to the father. That award was a final dispositional order under R.C. 2151.415(A)(1).

{¶ 36} We have previously recognized the ability of CCDCFS to appeal an order that terminates the agency’s temporary custody and awards legal custody

of a child to an individual. See *In re Mayle* (Jul. 27, 2000), Cuyahoga App. No. 76739 and 77165; *In re G.R.*, Cuyahoga App. No. 83146, 2004-Ohio-999.

{¶ 37} We find the following excerpt from *In re Collier* (Feb. 4, 1992), Athens App. No. CA-1494, to be particularly instructive. Although discussing standing and not final, appealable orders, the court noted that:

{¶ 38} “A children services board exercises its powers and undertakes its duties ‘on behalf of children in the county considered by the board *** to be in need of public care or protective services ***’ R.C. 5153.16. In exercising its powers, ‘[t]he county children services board *** shall have the capacity possessed by natural persons to institute proceedings in any court.’ R.C. 5153.18(A), emphasis added. By empowering appellant to exercise its powers on behalf of children it deems in need of care or services, the General Assembly necessarily gave appellant a present interest in the subject matter of an action brought pursuant to, and in discharge of, its statutory powers and duties. As the judgment herein thwarted appellant in the exercise and discharge of its powers and duties, it has demonstrated prejudice as a result of that judgment.”

{¶ 39} Likewise, we find that the agency does have a substantial right affected by the court’s order in that the agency no longer has the means to protect the child as the child’s temporary custodian. We find this to be especially true in this case as the trial court specifically denied the agency’s request for protective supervision.

{¶ 40} Therefore, we find that the agency has appealed a final order and we have jurisdiction to reach the merits of the appeal.

Permanent Custody Factors

{¶ 41} R.C. 2151.414 sets forth a two-prong analysis to be applied by the juvenile court for a determination of whether permanent custody should be granted to an agency. The statute requires the court to find, by clear and convincing evidence, (1) one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(d), and (2) an award of permanent custody is in the best interest of the child.

{¶ 42} Clear and convincing evidence is that which will produce in the trier of fact “a firm belief or conviction as to the facts sought to be established.” *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, 481 N.E.2d 613, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118, paragraph three of the syllabus. While requiring a greater standard of proof than a preponderance of the evidence, clear and convincing evidence requires less than proof beyond a reasonable doubt. *In re Parsons* (Nov. 12, 1997), Lorain App. Nos. 97CA006662 and 97CA006663.

{¶ 43} As it relates to this appeal, R.C. 2151.414(B)(1)(d) focuses on whether the child has “been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.” It is undisputed that at the time the second motion for permanent custody was filed, D.A. had

been in the temporary custody of CCDCFs for over twelve months of a consecutive twenty-two month period. Indeed, D.A. had been in agency custody since he was two days old and for over two years by the time of trial.

{¶ 44} Since D.A. had been in custody of CCDCFs for over twelve months of a consecutive twenty-two month period, additional findings were not required under R.C. 2151.414(E)(1)-(2). See *In re W.C.*, Cuyahoga App. No. 90748, 2008-Ohio-2047, ¶9. “The court does not need to determine that the child cannot or should not be placed with either parent within a reasonable time [when] the child has been in the temporary custody of one or more public children services agencies for more than 12 of the last 22 months.” *In re M.H.*, Cuyahoga App. No. 80620, 2002-Ohio-2968, at 25; See R.C. 2151.414(B); see, also, *In re William S.*, 75 Ohio St.3d 95, 99, 1996-Ohio-182, 661 N.E.2d 738. Thus, the only other finding the trial court must make is that an award of permanent custody is in the best interest of the child.

{¶ 45} R.C. 2151.414(D)(1)(a) through (e) set forth the relevant factors that a court must consider in determining the best interest of the child. These factors include, but are not limited to, the following:

“(a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

“(b) 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;

“(c) The custodial history of the child, including whether 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 * * *;

“(d) 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 to the agency;

“(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.”

{¶ 46} This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re W.C.; In re Moore* (Aug. 31, 2000), Cuyahoga App. No. 76942, citing, *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 621 N.E.2d 426; *In re C.H.*, Cuyahoga App. Nos. 82258 and 82852, 2003-Ohio-6854.

{¶ 47} An R.C. 2151.414(D) determination of a child’s best interests is an application of the court’s discretion based upon a nonexclusive list of factors. We review that determination for an abuse of discretion. An abuse of discretion implies that the court’s decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. “While a trial court’s discretion in a custody modification proceeding is broad, it is not absolute, and is subject to reversal upon a showing of abuse of discretion.” *In re Mayle* (July 27, 2000), Cuyahoga App. Nos. 76739 and 77165, citing *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846. A trial court's failure to base its decision on a consideration of the best interests of the child constitutes an abuse of discretion. *In re T.W.*, Cuyahoga App. No.

85845, 2005-Ohio-5446, appeal not allowed by 108 Ohio St.3d 1418, 2006-Ohio-179, 841 N.E.2d 321, citing *In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319, 574 N.E.2d 1055.

Trial Court's Findings

{¶ 48} Based on the applicable standard of review, we must determine both whether the trial court's decision was against the manifest weight of the evidence and whether the trial court abused its discretion in finding that a grant of permanent custody to CCDCFS was not in the child's best interest.

{¶ 49} On appeal, the agency argues that the overwhelming evidence presented at trial showed that it is in D.A.'s best interests that permanent custody be granted to the agency. The mother and father argue that the father presented competent, credible evidence that the father is able to meet D.A.'s basic needs.

{¶ 50} The trial court relied on its findings that the parents were willing to provide food, clothing, shelter, and other basic necessities for D.A.; the parents demonstrated a commitment to the child by regularly communicating, visiting, and supporting the child when able to do so; the mother maintained a stable relationship with the father prior to the birth of the child; the father was able to obtain employment and housing; and the father continued to engage the support of family members.

Best Interest of the Child

{¶ 51} In Ohio, it is axiomatic that the best interest determination focuses on the child, not the parent. *In re Mayle*, citing *Miller* at 75; *In re Awkal* (1994), 95

Ohio App.3d 309, 315, 642 N.E.2d 424. R.C. 2151.414(C) expressly prohibits the court from considering the effect the granting of permanent custody to a children services agency would have upon the parents.

{¶ 52} As mentioned earlier, since D.A. had been in the custody of CCDCFS for more than 12 out of 22 consecutive months, the only additional finding that the trial court was required to make was that permanent custody is in the child's best interests. Although the trial court need only find one of the five factors, we will deal with each factor in turn.

{¶ 53} Pursuant to R.C. 2151.414(D)(1)(a) and (c), the record reflects that D.A. was placed with a relative caregiver when he was a few days old. He has bonded with that caregiver and she wishes to adopt him if permanent custody is granted to the agency. The caregiver told the social worker that she was not interested in having legal custody of D.A. because she wanted to provide a permanent home for the child. We also note that D.A. appears to have a relationship with both his mother and father and the caregiver allows interaction between the child and his parents. But although the supervised visits that took place at the agency seemed to go well, both the GAL and the social worker expressed concern that the child and the parents did not seem to interact very much during the few visits they had observed and the child often retreated to his room when his parents came over. The 2008 psychologist report also noted that the mother made it clear that she would be "just as happy with getting [money] instead of getting custody of the baby back."

{¶ 54} As to R.C. 2151.414(D)(1)(b), the child is only two years old and therefore unable to express his own wishes. The GAL recommended that permanent custody be granted to the agency as she had serious concerns for D.A.'s safety. The GAL based her findings on: 1) the parents inability to care for themselves, let alone a small child; 2) mother's history of leaving her young children alone despite repeated agency involvement; 3) mother has consistently shared that she intends to be the primary caregiver for the child; 4) the results of the mother's psychological evaluations; 5) D.A.'s attachment to his caregiver; 6) the parents have taken no responsibility for and do not understand why D.A. was removed from their care; 7) the parents have refused to engage in court-ordered services; and 8) the parents' history of unemployment and homelessness.

{¶ 55} As to R.C. 2151.414(D)(1)(d), there is significant evidence in the record that D.A. needs legally secure placement and that such placement cannot be made without a grant of permanent custody to the agency. Finally, as to R.C. 2151.414(D)(5), only the mother falls into this category, as she had had the parental rights involuntarily terminated with respect to a sibling of the child. See R.C. 2151.414(E)(11).

{¶ 56} Based on the record, we find the trial court abused its discretion in finding that a grant of permanent custody was not in the best interest of the child.

The trial court found that the father had substantially remedied the conditions causing the child to be placed outside the child's home, but not only is that conclusion unsupported by the record, that finding is not a necessary finding

since D.A. had been in agency custody for twelve consecutive months of a twenty-two month period.

{¶ 57} The record reflects that the father repeatedly refused to comply with his caseplan and the agency's efforts toward reunification. Moreover, the father was unable to show he had stable housing, employment, or provisions for the child at the time of trial. Although the father testified at trial that he had secured both housing and a job, the agency had not had the opportunity to do a home study to see if the housing was appropriate because the father refused access to either the agency or the GAL. The father showed the court an unsigned lease for an apartment he had yet to move into and admitted that D.A. was not on the lease. The father also testified that he had no plan for daycare other than to find family members to watch D.A., had no reliable transportation for D.A., and had not followed through on the court's order to enroll the child in protective daycare.

{¶ 58} We note that the father failed to comply with the court's orders the first time around, when the court initially granted him legal custody of D.A. Even after numerous continuances, renewed efforts made by the agency to work towards reunification, and subsequent filings for temporary and permanent custody, the father still did not comply with the case plan or the court's orders. And even though the father failed to follow the court's orders, the trial court still granted him legal custody, thereby delaying permanency for the child.

{¶ 59} We also cannot ignore the evidence presented at trial that the mother, who had her parental rights terminated with respect to ten other children,

had not and could not provide basic needs for the child but still intended to provide care for the child when the father was at work. No evidence at trial was presented to refute the findings of the aforementioned 2008 psychological report and as of the trial date, the mother had still made no effort to address her mental health or parenting issues.

{¶ 60} Although the trial court awarded legal custody of D.A. to the father and not the mother, the reality of the trial court's order is that it placed D.A. into the very situation from which CCDCFs sought to remove him in the first instance: that of a mother, who is unwilling and unable to properly care for the child, living in the same household and with unlimited access to the child. See *In re W.C.* The trial court erred, therefore, in granting legal custody of D.A. to the father.

{¶ 61} Although it is apparent that the father loves his child and desires to care for the child, this court has previously stated, "the mere existence of a good relationship is insufficient. Overall, we are concerned with the best interest of the child, not the mere existence of a relationship." *In re W.C.* at ¶26, citing *In re R.N.*, Cuyahoga App. No. 83121, 2004-Ohio-2560; see, also, *In re Holyak* (July 12, 2001), Cuyahoga App. No. 78890; R.C. 2151.414(D)(1).

{¶ 62} A permanent, loving family and a safe and stable home is clearly in D.A.'s best interest. Although the trial court's repeated attempts to place the child with the father may have been well-intentioned, it placed the father's interests ahead of the child's, in violation of the Revised Code and the relevant case law and therefore failed to consider the best interest of D.A. See *In Re*

W.C. We find that the trial court abused its discretion in finding that it was in D.A.'s best interests to award the father legal custody of him after the father continually failed to comply with the caseplan and the court's orders and the trial court's decision was against the manifest weight of the evidence.

{¶ 63} Accordingly, the trial court's judgment is reversed, the order is vacated and permanent custody of D.A. is granted to CCDCFS. The case is remanded to the trial court for proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

LARRY A. JONES, JUDGE

**MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR**