

when it found that the children could not be placed with the parent within a reasonable time and that it was in the best interest of the children to permanently terminate the parental rights of the mother. Because competent credible evidence supports the trial court's determination that awarding Washington County Children Services Board permanent custody would serve the children's best interests, we find Appellant's assigned error to be without merit. Therefore, we affirm the decision of the trial court.

FACTS

{¶2} On August 7, 2007, Appellant's children, C.L.N. and P.A.N., were placed in the temporary custody of the Washington County Children Services Board ("WCCSB") pursuant to the filing of an ex parte removal order. The ex parte order was based, in part, upon allegations that P.A.N. had been sexually abused by her stepfather and that Appellant, despite agreeing to a safety plan, had failed to protect her children from her husband. On August 8, 2007, the next day, a probable cause hearing was held at which the trial court ordered that the children remain in the temporary custody of WCCSB. On August 21, 2007, an initial hearing was held on the complaints in dependency filed as to both children by the WCCSB. At the hearing, the court ordered that the children remain in the

temporary custody of WCCSB and scheduled an adjudication to be held on September 20, 2007.

{¶3} Appellant admitted to the dependency allegations as to both children at the adjudication hearing and as such, the court found both children to be dependent pursuant to R.C. 2151.04(C). The court further ordered that the children continue to remain in the temporary custody of WCCSB pending disposition, which the court scheduled to be held on October 15, 2007. Specific goals for reunification were put into place at that time. After being continued, the dispositional hearing was held on November 5, 2007, at which the parties reached an agreement that the children would continue in the temporary custody of WCCSB pending an annual review hearing, to be held on July 29, 2008.

{¶4} Subsequently, another hearing was held December 10, 2007, in order to address a motion by WCCSB to approve the case plan, as well as a motion for contempt filed by Appellant. Appellant's motion for contempt was filed as a result WCCSB's termination of her supervised visitation, based on statements allegedly made by C.L.N. indicating that his mother had sexually abused him. The hearing was unable to be concluded in one day and thus was re-convened on January 24, 2008. After taking the matters under advisement, the trial court entered a decision and judgment entry on

February 13, 2008, approving the case plan, dismissing Appellant's contempt motion and granting Appellant supervised visitation with the children pending the scheduled annual review hearing.

{¶5} However, prior to the annual review hearing taking place, on June 23, 2008, WCCSB filed a motion for permanent custody with respect to both children. WCCSB's motion was based upon concerns related to Appellant's multiple changes in residence, instability of housing, refusal to allow WCCSB to conduct home inspections, failure to attend multiple parenting classes, difficulty grasping parenting concepts, cancellation of numerous counseling sessions, attendance at only one scheduled visitation from May 9, 2008, to the time of the filing, and Appellant's prioritization of her adult relationships (with various boyfriends) above the needs of her children.

{¶6} A permanent custody hearing was eventually held on December 16, 2008. Appellant, as well as her counsel and court appointed guardian ad litem, counsel for WCCSB and the guardian ad litem for the children were all in attendance at the hearing. WCCSB offered testimony from several witnesses, including 1) Eva Hill, a psychotherapist/social worker at L&P Services, who had provided counseling to Appellant; 2) Maureen Sigafos, the special education supervisor at Marietta Schools, where the children

attend school; 3) Dierdre Dearth, the children's foster mother; 4) Alisa Leasure Whitlach, a counselor that worked with C.L.N. regarding his behavior and coping issues; 5) Lea Ann Bates, a private counselor affiliated with WCCSB who had counseled P.A.N. for issues related to sexual abuse, as well as separation issues from her mother; and 6) Kathy Wright, a caseworker from WCCSB.

{¶7} Eva Hill testified regarding her counseling with Appellant and stated that while she had recommended weekly visits, Appellant preferred monthly visits instead. Hill further testified that Appellant stopped attending her counseling sessions in April of 2008, and had made no further contact with the counselor since that time. Maureen Sigafos testified regarding the children's educational progress. She stated that the children's speech had greatly improved since enrollment and that the children, while in foster care, had been compliant in attendance, were neat and clean in appearance and were making good progress. She further testified that Appellant was often unresponsive to calls from the school regarding the children and failed to attend educational meetings.

{¶8} Dierdre Dearth testified, stating that she had been the children's foster mother for one and a half years. She stated that both children had toileting and behavior problems when they first came into her home, also

explaining that the children did not know how to bathe themselves or brush their teeth. She further stated that P.A.N. initially suffered from eating problems and was unable to keep food down at first. She testified that both children have improved and have since learned to toilet, bathe and brush their teeth.

{¶9} Alisa Whitlach testified that while C.L.N. was initially “wild” during their counseling sessions, he had since improved and was more stable now than he was when he was in Appellant’s care. Lee Ann Bates testified that Appellant had cancelled thirteen of twenty joint counseling sessions with P.A.N. She stated that P.A.N. did not really have an attachment to Appellant and that P.A.N. was content and stable in foster care, despite an incident which she described that occurred while P.A.N. was in respite care that involved P.A.N. suffering sexual abuse by another child and possibly C.L.N. She further testified that Appellant was not interested in learning to parent well.

{¶10} Kathy Wright testified regarding the prior allegation that Appellant had sexually abused C.L.N. She also testified regarding Appellant’s failure to comply with the case plan, her frequent moves, failure to obtain housing, refusal to permit home inspections, frequent changes in telephone numbers, including eight different changes in August of 2008

alone. She further testified that there were no suitable relative placements for the children and that the children's father had been uninvolved in their lives, had a long criminal history, had active warrants for his arrest, lived out of state and was in agreement with permanent custody being granted to WCCSB.

{¶11} Appellant presented only two witnesses. First, Appellant's sister testified, stating that Appellant was now living with her and that there was space in the house for the children to each have their own rooms. She further stated that she was assisting Appellant with transportation. Appellant also testified on her own behalf. She stated that she was currently living with her sister, Jessica, and that she was trying to do what she was supposed to do. She testified that she had avoided complying with the court ordered testing due to her fear that she would be diagnosed with mental retardation. She stated that Kathy at WCCSB had told her that if she failed the testing, she would not get her children back.

{¶12} In a decision and judgment entry filed on April 3, 2009, the court granted permanent custody of the children to WCCSB. On April 24, 2008, Appellant filed a single pro se notice of appeal with respect to both children and on May 14, 2008, separate supplemental notices of appeal were filed as to each child on Appellant's behalf by appointed counsel. By entry

dated September 1, 2009, we consolidated these matters for purposes of appeal. In the briefs filed as to each child, Appellant sets forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

"I. THE JUVENILE COURT ABUSED ITS DISCRETION, AND ITS JUDGMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, WHEN IT FOUND THAT THE CHILD[REN] COULD NOT BE PLACED WITH THE PARENT WITHIN A REASONABLE TIME AND THAT IT WAS IN THE BEST INTEREST OF THE CHILD[REN] TO PERMANENTLY TERMINATE THE PARENTAL RIGHTS OF THE MOTHER."

APPELLATE STANDARD OF REVIEW

{¶13} Initially, we note that 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, 2006-Ohio-1965, 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, 1997-Ohio-260, 674 N.E.2d 1159; see, also, *In re Christian*, Athens App. No. 04CA10, 2004-Ohio-3146.

STANDARD FOR GRANTING PERMANENT CUSTODY

{¶14} A trial court may not award a children services agency permanent custody absent clear and convincing evidence. The Supreme Court of Ohio 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.” *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.

PERMANENT CUSTODY PRINCIPLES

{¶15} 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; *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.

{¶16} 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 * * * 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.” R.C. 2151.01(A)

PERMANENT CUSTODY FRAMEWORK

{¶17} R.C. 2151.414(B)(1)² 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.

² Because the motion for permanent custody at issue was filed on June 23, 2008, we apply a prior version of R.C. 2151.414, that has an effective date of October 5, 2000 and which was in effect at the time of the filing.

(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.”

{¶18} 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. Here, the trial court found that R.C. 2151.414(B)(1)(a) applied. Therefore, we must consider whether the evidence supports the court's finding that the children could not be returned to Appellant within a reasonable time.

REASONABLE TIME

{¶19} 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 following 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.” Here, the court found the following R.C. 2151.414(E) factors to be present:

“(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

* * *

(4) The 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.

* * *

(16) Any other factor the court considers relevant.”

{¶20} A trial court may base its decision that a child cannot or should not be placed with either parent within a reasonable time upon the existence of any one of the above factors. The existence of a single factor will support a finding that a child cannot be placed with either parent within a reasonable time. See *In re William S.* (1996), 75 Ohio St.3d 95, 1996-Ohio-182, 661 N.E.2d 738; *In re Hurlow* (Sept. 21, 1998), Gallia App. No. 98 CA 6, 1998

WL 655414; *In re Butcher* (Apr. 10, 1991), Athens App. No. 1170, 1991 WL 62145.

{¶21} Here, the trial court found that R.C. 2151.414(E)(1), (4), and (16) applied. The court reasoned that the parents had continuously and repeatedly failed to substantially remedy the conditions that caused the outside placement of the children, that neither parent is able to provide for the children or provide stable housing for the children, specifically noting that Appellant's "repeated moves throughout this case and her attendance at approximately only one half of the visits have demonstrated a lack of stability and commitment that is necessary to raise a child." The court further found that Appellant had not utilized the psychiatric, psychological and other social and rehabilitative services and other resources that were made available to her in order to help her regain custody of her children. Finally, the court found that Appellant had failed to provide for her children, that all of the children's needs were being met by their foster family and that the children were bonded to them. As set forth above, any one of these factors, standing alone, supports the trial court's finding that the children cannot or should not be returned to Appellant within a reasonable time.

BEST INTERESTS

{¶22} We must next review the trial court's decision with regard to its best interest findings. R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child's best interests would be served by granting a children services agency permanent custody. The factors include: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; (4) 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; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.³

³ R.C. 2151.414(E)(7) to (11), effective date October 5, 2000, provides as follows:

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

In this case, competent and credible evidence supports the trial court's finding that awarding permanent custody to WCCSB serves the children's best interests. Specifically, the trial court found that R.C. 2151.414 factors (D)(a), (c) and (d) were applicable. First, the children's interaction and interrelationships with their mother and with others supports the trial court's best interests finding. The court found that all of the children's needs are being met by their foster care and the children are bonded to their foster family. Further, the trial court found that Appellant "lacks parenting skills and acts more like the child's sibling rather than a mother. The mother is not interested in learning how to parent. The mother and child do not have a bond, but rather an attachment like an aunt or a friend would have."

Second, regarding the custodial history of the children, the evidence reveals and the trial court found that at the time of the permanency hearing, the

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated pursuant to this section or section 2151.353 [2151.35.3] or 2151.415 [2151.41.5] of the Revised Code with respect to a sibling of the child.

children had been in foster care for sixteen months. Further, the children need a permanent, secure home, which Appellant cannot provide. As found by the trial court, “[t]he children deserve stability, a nurturing environment, and permanency in their lives. Neither parent can provide this. The Children’s Guardian Ad Litem supports the motion for permanency and believes the motions for permanent custody should be granted.” Thus, a balancing of the best interests factors shows that awarding permanent custody to the WCCSB would serve the children's best interests.

{¶23} Consequently, the record contains competent, credible evidence to support the trial court's finding that awarding WCCSB permanent custody serves the children's best interests. Accordingly, we overrule Appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the 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 Washington County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Kline, P.J. and Harsha, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Judge Matthew W. McFarland

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.