[Cite as **_In re M.M._**, 2020-Ohio-7038.]

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

IN RE: M.M.-1 M.M.-2, Adjudicated Dependent Children.	:	Case No. 20CA7 DECISION AND JUDGMENT ENTRY **RELEASED: 12/23/2020**

APPEARANCES:

Timothy L. Warren, Assistant Athens County Prosecutor, Athens, Ohio, for Appellee.

Ryan Shepler, Logan, Ohio for Appellant.

Wilkin, J.

{¶1} This is an appeal from an Athens County Court of Common Pleas, Juvenile Division, judgment that granted permanent custody of Appellant's two children to Appellee, Athens County Children's Services ("ACCS"). Appellant asserts two assignments of error on appeal: (1) the trial court erred by failing to require ACCS to use reasonable efforts to reunify the children with the family prior to filing its permanent custody motion and (2) the trial court erred in finding, by clear and convincing evidence, that granting custody is in the child's best interest. After reviewing the record and the applicable law, we find that the trial court's judgment is supported by the manifest weight of the evidence. Therefore, we affirm the judgment of the trial court.

BACKGROUND

{¶2} Appellant, A.M. ("Appellant"), and D.M. ("Father") are the parents of minor M.M. 1 and M.M. 2 ("children"). On June 19, 2018, ACCS filed a complaint seeking emergency custody of Appellant's children pursuant to R.C. 2151.31(A)(3)(a), (b), or (c). The complaint alleged that the Appellant and Father were using Methamphetamine; Father was selling drugs and had dangerous people in and out of the home; one of the children reported seeing their Father smoking drugs in a pipe and observed his aunt shooting up with a needle; they were short on food; their home had no electricity or running water; the home was unsanitary; and there were no suitable adults to care for the children.

{¶3} After a shelter care hearing, the trial court issued a judgment that granted temporary custody of the children to ACCS pending a hearing. Pursuant to R.C. 2151.412 (C)(1), ACCS filed its first case plan on July 18, 2018, which required both parents to (1) complete a drug and alcohol assessment and follow all recommendations; (2) submit to random drug screens with a refusal to be considered a positive test result; (3) meet with a caseworker for monthly home visits, (4) visit with children consistently; (5) address hazards and sanitary conditions in the home, (6) maintain home free from violence and criminal activity, and (7) sign releases of information so that ACCS can communicate with service providers.

{¶4} On August 15, 2018, the trial court issued an order appointing Nancy Cooper as a guardian ad litem ("GAL") in this case. On August 31, 2018, the trial court issued an entry finding the children to be dependent under R.C.

2151.04(C). On September 12, 2018, the trial court issued an entry finding that ACCS had undertaken reasonable efforts to work toward finalizing the permanency plan for reunification by providing Appellant with case management, visitation, transportation assistance, following up with Integration Services, following up with Rural Women's Rehabilitation Program, following up with START, and offering drug screens. However, the court found that permitting the children to be at home would be contrary to their welfare. Consequently, the court granted temporary custody to ACCS.

{¶5} Over the next year, the trial court held several in-court review hearings each finding that ACCS was making reasonable efforts regarding the reunification plan but continued temporary custody with ACCS. However, on July 19, 2019, ACCS filed a motion for permanent custody.

{¶6} Beginning on September 23, 2019, the trial court held a multiple-day hearing to consider ACCS's motion for permanent custody of the children. During the hearing, the trial court heard from numerous witnesses including the parents, the GAL, ACCS case workers, and others. On November 14, 2019, the trial court issued an entry with findings of fact and conclusions of law. The court made the following findings under R.C. 2151.414(D)(1)(a-e): (1) The children and parents love each other; (2) the children have expressed a desire to be reunited with their parents, but are too young to understand the risks it would create for them; (3) the children have lived in foster care or kinship care since this case was opened; (4) safe permanent placement can only be achieved through permanent custody with the agency and a chance of adoption, and (4) none of the factors in

R.C. 2151.414(E)(7)-(11) apply in this case. Then examining the factors outlined at R.C. 2151.414, finding only sections E(1) and (16) applicable, the court found by "clear and convincing evidence that the children cannot be placed with either parent within a reasonable time and should not be placed with the parents." The court went on to state:

> Sadly, these parents would not meaningfully address their drug use issues even though the Court and all agencies involved made it clear that all the problems that stood between them and adequate parenting were traceable to that problem and that adequate time would be allotted if they made a real effort. [Appellant] at least tried and even considered the likelihood that to be successful, she might have to separate from [D.M.]. However, there was never a consistent or adequate commitment to recovery, and a shocking lack of consistency in even the visitation attendance, something that is cherished by most parents. The parents have engaged in a lot of denial and deflection of blame all to their own detriment. As challenging as it will probably be these boys will now have to move on with their young lives and bond with an appropriate family unit other than their biological parents.

{¶7} Finally, the court found that ACCS had established that it made reasonable efforts to unify the parents, prior to the hearing.

{¶8} The trial court made the following conclusions of law: "the children cannot be placed with either parent within a reasonable time and should not be placed with the parents; that permanent custody in favor of ACCS is in the children's best interest; and that ACCS has satisfied the 'reasonable efforts' requirement of R.C. 2151.419," and granted permanent custody of the children to ACCS. Appellant appeals, asserting two assignments of error.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED BY FAILING TO REQUIRE ACCS TO USE REASONABLE EFFORTS TO REUNIFY THE FAMILY PRIOR TO FILING ITS PERMANENT CUSTODY MOTION.

II. THE TRIAL COURT ERRED IN FINDING, BY CLEAR AND CONVINCING EVIDECE, THAT GRANTING CUSTODY IS IN THE CHILD'S BEST INTEREST

STANDARD OF REVIEW

{¶9} "[A] reviewing court ordinarily will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence." *In the Matter of K.W.*, 4th Dist. Highland No. 17CA7, 2018-Ohio-1933, 111 N.E.3d 368, ¶ 25, citing *In re B.E.,* 4th Dist. Highland No. 13CA26, 2014-Ohio-3178, 2014 WL 3557277, ¶ 27; *In re R.S.,* 4th Dist. Highland No. 13CA22, 2013-Ohio-5569, 2013 WL 6710797, ¶ 29. We have also applied the manifest weight of the evidence standard of review in determining whether a trial court made reasonable efforts in reunifying parents with their children. See *In the Matter of A.M.*, 4th Dist. Athens Nos. 17CA32 and 17CA36, 2018-Ohio-646, 105 N.E.3d 389, ¶ 114, fn. 8; *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, ¶ 75.

{¶10} " 'Weight of the evidence concerns the inclination of the greater amount of credible evidence offered in a trial, to support one side of the issue rather than the other.' " *In the Matter of C.E.*, 4th Dist. Athens No. 19CA10, 2019-Ohio-4125, ¶ 29, quoting *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶ 12. " 'Weight is not a question of mathematics, but depends on its effect in inducing belief.' " *Id.*

> To determine whether a permanent custody decision is against the manifest weight of the evidence, an appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving evidentiary conflicts, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18, 15CA19, 2016-Ohio-916, ¶ 45, citing *In re R.S.,* 4th Dist. Highland No. 13CA22, 2013–Ohio–5569, ¶ 30, citing *Eastley v. Volkman,* 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 20.

{¶11} In applying this standard of review, "we must defer to the trial court's credibility determinations because of the presumption in favor of the finder of fact. * * *" and such deference is particularly " '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.' " (Citation omitted.) *Id.*, quoting *Davis v. Flickinger,* 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997). "[I]f the children

services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted (and that the agency made reasonable efforts of reunification), then the court's decision is not against the manifest weight of the evidence." *In re R.M.,* 4th Dist. Athens Nos. 12CA43 and 12CA44, 2013-Ohio-3588, 997 N.E.2d 169, ¶ 55.

ASSIGNMENT OF ERROR I

{¶12} In her first assignment of error, the Appellant argues that ACCS did not make reasonable efforts to reunify Appellant and her children prior to the filing of the motion for permanent custody. Appellant alleges during her participation in the Rural Women's Recovery Program ("RWRP") in May 2019, she was informed that ACCS would be seeking permanent custody of her children and consequently became discouraged and quit the program. She further alleges that the caseworker was supposed to visit monthly, but only six such visits occurred throughout the pendency of the within matter, and the caseworker failed to return the calls of the Father. Therefore, Appellant argues that the trial court erred in finding that ACCS made reasonable efforts to reunite Appellant with her children.

{¶13} In response, the ACCS alleges that it has made reasonable efforts throughout the duration of the case. Additionally, the trial court recognized on six different occasions during the pendency of the case that ACCS was making reasonable efforts in attempting to reunify Appellant with her children. The ACCS further argues that it established at the permanent custody hearing that it made

reasonable efforts to reunify the Appellant with her children by attempting home visits, offering drug screens, providing the parents with cell phones, furniture, gas cards, food and cleaning supplies.

{¶14} Additionally, the ACCS asserts that even if the electricity is on and repairs have been made to the Appellant's home, there are still outstanding issues that remain, including that neither Appellant nor Father have a steady income and both continue to have substance abuse problems as evidenced by their positive drug screens, that they refuse to acknowledge.

Law and Analysis

{¶15} "R.C. 2151.419(A)(1) requires a trial court to determine whether a children services agency 'made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home.' " *In the Matter of K.W.*, 4th Dist. Highland Nos. 17CA7 and 17CA8, 2018-Ohio-1933, 111 N.E.3d 368, ¶ 56, quoting R.C. 2151.419(A)(1). R.C. 2151.419 "applies only at 'adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children * * *.' " *Id.*, quoting *In re C.F.*, 113 Ohio St. 3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 41.

{¶16} We have recognized that "reasonable efforts" in this context means that the agency " ' ''act[s] diligently and provide[s] services appropriate to the family's need ' ' " for unification. *In re McGiffin*, 4th Dist. Hocking No. 05CA13, 2005-Ohio-6528, ¶ 57, quoting *In re H.M.K.,* 3d Dist. Wyandot Nos. 16-12-15 and 16-12-16, 2013-Ohio-4317, ¶ 95, quoting *In re D.A.,* 6th Dist. Lucas No. L-

11-1197, 2012-Ohio-1104. " ' 'Reasonable efforts means that a children's services agency must act diligently and provide services appropriate to the family's need to prevent the child's removal or as a predicate to reunification.' ' " *In the Matter of A.M.*, 4th Dist. Athens Nos. 17CA32 and 17CA36, 2018-Ohio-646, 105 N.E.3d 389, ¶ 111, quoting *In re H.M.K.,* 3rd Dist. Wyandot Nos. 16-12-15 and 16-12-16, 2013-Ohio-4317, ¶ 95, quoting *In re D.A.,* 6th Dist. Lucas No. L-11-1197, 2012-Ohio-1104, ¶ 30. "The standard is whether the agency used reasonable efforts and not whether the agency did everything possible." *In re Lopez*, 166 Ohio App. 3d 688, 852 N.E.2d 1266, ¶ 54 (3rd Dist.), citing *In re Leveck,* 3rd Dist. Hancock No. 5–02–52, 5–02–53, 5–02–54, 2003-Ohio-1269,¶ 10. Subject to "a few narrowly defined exceptions," none of which are raised here, "the state must have made reasonable efforts to reunify the family prior to the termination of parental rights." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 20. However, "[i]f the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶ 43.

{¶17} Within a month of the filing of the dependency complaint, ACCS filed the unification plan, which defined the steps that the parents needed to take to reunify with their children: (1) complete a drug and alcohol assessment and follow all recommendations; (2) submit to random drug screens with a refusal to be considered a positive test result; (3) meet with a caseworker for monthly home visits, (4) visit with children consistently; (5) address hazards and sanitary

conditions in the home, (6) maintain home free from violence and criminal activity, and (7) sign releases of information so that ACCS can communicate with service providers.

{¶18} The ACCS provided Appellant a cell phone, cleaning supplies, furniture, a mattress and box springs, gas cards, food, and transportation. In addition, ACCS caseworkers made home visits, provided drug screens, as well as referrals to support services, such as the RWRP, among others. And during the pendency of this case, the trial court held several in-court review hearings, each finding that ACCS was making reasonable efforts regarding the reunification plan.

{¶19} In large part, Appellant's argument that ACCS did not make reasonable efforts to reunify Appellant with her children is predicated on the assertion that ACCS undermined Appellant's motivation to comply with the reunification plan, and more specifically her drug rehabilitation, because while attending the RWRP in May of 2019, she claims that she was told ACCS was going to seek permanent custody of her children.

{¶20} Although Tara Carsey, an ACCS caseworker, testified that she told *Father* that ACCS was going to seek permanent custody of their children, aside from Appellant's bald assertion, we can find nothing in the record to confirm that anyone told Appellant that the ACCS was seeking permanent custody. Nevertheless, even assuming she was aware, we find that it did not cause ACCS's effort to reunify the family to be unreasonable. While that might have been discouraging news to Appellant, it did not prevent Appellant from attending

RWRP. Additionally, this was not Appellant's first time leaving the program; she had previously been enrolled in RWRP in August of 2018, and left after four days. Finally, and perhaps most important, recovery from her drug addiction was one of the reunification plan's requirements that the *trial court*, not ACCS, would consider in ultimately determining whether she could be reunited with her children. And successful completion of programs like RWRP is one of the factors that might have influenced the court in favor of reunification of Appellant with her children. Regardless of ACCS's intentions, Appellant had the ability to attend RWRP and completing its program could have helped her comply with one of the two major hurdles that the trial court ultimately determined justified granting permanent custody to ACCS. Appellant had access to RWRP, and enrolled twice, but, both times, on her own accord, failed to complete the program.

{¶21} Further, we find the fact that the caseworker did not meet with Appellant every month did not render the ACCS's efforts unreasonable, especially considering that the caseworker testified that she did not make all the meetings because the parents were becoming increasingly hostile toward her.

{¶22} There is substantial credible evidence that ACCS made reasonable efforts in providing Appellant and Father the support they needed to comply with the reunification plan by way of supplies and support. Therefore, we find that the ACCS used reasonable efforts toward reunification and that said efforts are supported by the manifest weight of the evidence. Accordingly, we overrule Appellant's first assignment of error.

ASSIGNMENT OF ERROR II

{¶23} In her second assignment of error, Appellant argues that the trial court erred in finding, by clear and convincing evidence, that granting permanent custody is in the child's best interest.

{¶24} Appellant asserts that the testimony of several witnesses, including the guardian ad litem ("GAL"), a foster parent, and the children, indicted that the children had a strong bond with their parents. She also alleges that she wants custody of her children and there is no evidence that the children were harmed while in her care. Appellant also asserts that none of the factors in R.C. 2151.414(E)(7) through (11) apply in this case, e.g. she claims that she has not withheld food or medical treatment and she has not put the children in danger by virtue of drug abuse. Accordingly, Appellant argues that the ACCS has failed to prove by clear and convincing evidence that granting permanent custody to the ACCS was in the children's best interest.

{¶25} In response, the ACCS argues that the trial court's findings are supported by the weight of the evidence. Appellant alleges that the GAL testified that both parents have substance abuse issues and the children are not safe at home. The ACCS argues that the Father testified that he was incarcerated for failing to pay child support, refused to admit that he has a drug problem even though diagnosed with one, missed many visits with the children, and admitted that law enforcement had been called to their home due to a physical altercation with him and Appellant.

{¶26} The ACCS asserts that Appellant has admitted to having verbal altercations with Father, and that one time he punched her in the face, but still refused to leave him. The ACCS asserts that Appellant has refused to take drug screens and when she did, she would test positive for methamphetamine. She also admitted to missing numerous visits with her children.

{¶27} Therefore, the ACCS argues that the trial court's decision granting it permanent custody of Appellant's children is not against the manifest weight of the evidence.

Law and Analysis

{¶28} "A children services agency may obtain permanent custody of a child by (1) requesting it in the abuse, neglect or dependency complaint under R.C. 2151.353, or (2) filing a motion under R.C. 2151.413 after obtaining temporary custody." *In the Matter of A.M.*, Athens Nos. 17CA32 and 17CA36, 2018-Ohio-646,¶ 53. In the case at bar, ACCS filed a motion for permanent custody after acquiring temporary custody. When an agency acquires temporary custody of a child and subsequently moves for permanent custody, R.C. 2151.414 applies. *In the Matter of I.W.*, 4th Dist. Pike No. 19CA902, 2020-Ohio-3112, ¶ 21. "R.C. 2151.414(B)(1) provides that a trial court may grant a children services agency permanent custody of a child if the court finds, by clear and convincing evidence, that (1) the child's best interest would be served by the award of permanent custody, and (2) any of the conditions in R.C. 2151.414(B)(1)(a)-(e) apply." *Id.* at ¶ 22.

{¶29} Appellant's assignment of error challenges only the best interest was not served when the trial court granted permanent custody to ACCS, so we address only that issue in our analysis. R.C. 2151.414(D) addresses the best-interest factors, and provides:

> In determining the best interest of a child * * * the court shall consider all relevant factors, including, but not limited, to the following: (1) 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; (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, 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 ending on or after March 18, 1999; (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; (5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. *In re McGiffin*, 4th Dist. Hocking No. 05CA13, 2005-Ohio-6528, ¶ 11.

{¶30} " 'No one element is given greater weight or heightened significance.' " *In the Matter of I.W.*, at ¶ 26, quoting *In re C.F.*, 113 Ohio St. 3d 73, 2007-Ohio-110484, 862 N.E.2d 816. "Instead, the trial court considers the totality of the circumstances when making its best interest determination." *In the Matter of K.W.*, 4th Dist. Highland No. 17CA7, 2018-Ohio-1933, 111 N.E.3d 368, ¶ 34, citing *In re K.M.S.*, 3rd Dist. Marion Nos. 9-15-37, 9-15-38, and 9-15-39, 2017-Ohio-142, , ¶ 24; *In re A.C.,* 9th Dist. Summit No. 27328, 2014-Ohio-4918, ¶ 46. And, while a court must consider these factors, it is not required to make factual findings in its judgment entry. *In re McGiffin* at ¶ 13, citing, *In re Myers,* 4th Dist. Athens App. No. 02CA50, 2003-Ohio-2776, ¶ 23.

{¶31} We initially note that even though not required, the trial court made factual findings regarding the best-interest factors in its decision. While the court recognized, and the evidence indicates, that the parents remedied some of the problems in their home that were hazardous to the children, it also stated that "[b]oth boys need and deserve a legally secure permanent placement which can only be achieved with a grant of permanent custody and an opportunity for adoption." Notably, the trial court also stated that the parents were unable to sufficiently address their drug habits, which would undermine their ability to be effective in properly caring for their children. The court also found that both parents missed visits with their children during the pendency of this case.

{¶32} The record is replete with evidence that both parents continued to abuse drugs during the pendency of this case, including methamphetamine, as evidenced by their own admissions and numerous refused or positive drug tests.

{¶33} The evidence also supports that both parents also missed many scheduled visits with their children while this case was pending. While both parents provided excuses as to why they were allegedly unable to make certain visitations, determining the credibility of this testimony was for the trial court as the trier of fact, which is a determination that we will not disturb in a manifest-weight-of-the-evidence review.

{¶34} In sum, we find that ACCS presented competent and credible evidence that both parents were unable to satisfactorily address their drug habit, used drugs during the pendency of this case, and missed a substantial number of visits with their children during the pendency of this case. Accordingly, we find that the trial court's decision to grant ACCS permanent custody of Appellant's children was in their best interest was supported by the manifest weight of the evidence. Therefore, we overrule Appellant's second assignment of error.

CONCLUSION

{¶35} Having overruled both of Appellant's assignment of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the AFFIRMED and costs to the Appellant.

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 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.

Hess, J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: ____________________________
Kristy Wilkin, 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.