**[Cite as *In re M.W.*, 2011-Ohio-6392.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
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| In the Matter of: | : | |
| | | No. 11AP-524 |
| M.W., | : | (C.P.C. No. 09JU-12137) |
| (A.K., | : | (REGULAR CALENDAR) |
| Appellant). | : | |

D E C I S I O N

Rendered on December 13, 2011

*Robert McClaren*, for appellee Franklin County Children Services.

*William T. Cramer*, for appellant.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

DORRIAN, J.

**{¶1}** Appellant, A.K. ("appellant"), appeals from the May 25, 2011 judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, granting permanent custody of M.W. ("M.W." or "the minor child") to Franklin County Children Services ("FCCS"). For the following reasons, we affirm.

**{¶2}** M.W. was born to appellant and J.W. on March 7, 2000. J.W. signed an acknowledgement of paternity on March 9, 2000. In December of 2010, J.W. was living in a homeless shelter. Based upon a conversation with J.W. in 2010, Sarah Terstage ("Terstage"), FCCS Child Welfare Caseworker III, concluded that J.W. could not care for

M.W. or himself. J.W. did not contest the permanent custody proceedings. The trial court noted that J.W. received notification of the permanent custody hearing; however, he failed to appear.

**{¶3}** Appellant gave birth to three children: D.M., born March 9, 1995, B.M., born October 3, 1997, and M.W., born March 7, 2000. D.M. currently lives with her father, and appellant does not know their present location. Appellant claims that she currently has custody of D.M., although she gave J.H. legal custody during her two-and-a half-year period of incarceration for possession and drug trafficking. Further, appellant believes that B.M.'s father kidnapped her approximately ten years ago, at the age of two, by failing to return B.M. to appellant after his weekend visitation. Appellant testified that she reported the kidnapping to the police, but because it was prior to the Amber Alert system and B.M.'s father signed the birth certificate, the police stated that " 'there's pretty much nothing we can do.' " (May 10, 2011 Tr. 46.) Appellant also admitted that she gave legal custody of M.W. to J.K., her husband, until her release from prison on October 9, 2007. Appellant believes that custody of M.W. automatically reverts back to her without having to attend a court hearing.

**{¶4}** On September 9, 2009, FCCS removed M.W. from appellant's care due to concerns regarding drug and alcohol abuse, mental health issues, and parenting issues. On September 9, 2009, FCCS filed a complaint for temporary custody of M.W., alleging that, pursuant to R.C. 2151.03(A)(2) and 2151.04(C), the minor child was neglected or dependent. In support of these allegations, FCCS claimed that it received three referrals regarding M.W.'s well-being. On August 5, 2009, FCCS received the first referral

reporting that A.K. was incarcerated but is now living with J.H., "a known drug user."[1] (Complaint, 1.) Further, the referral reported that: (1) since her release from prison, A.K. is using crack cocaine; (2) A.K. has been diagnosed with mental health conditions for which she has been prescribed medication; (3) J.H. recently lost custody of his own children and currently maintains an open case with FCCS; and (4) M.W.'s stepfather, J.K., had custody of the minor child during A.K.'s incarceration, but a change in custody could not be confirmed by FCCS. (Complaint, 1.) On August 20, 2009, FCCS received a second referral indicating that M.W. was left home alone and unsupervised while A.K. and J.H. were at the hospital. (Complaint, 1.) On September 8, 2009, FCCS received a third referral stating that M.W. was discovered in A.K. and J.H.'s residence. At the time M.W. was discovered, she was being supervised by J.H., who appeared to be under the influence of a substance, possibly prescription drugs, and unable to care for M.W. At that time, A.K. was allegedly hospitalized due to a drug overdose. (Complaint, 1.)

**{¶5}** On September 9, 2009, per an emergency care order filed and signed that same day by a magistrate of the trial court, FCCS placed M.W. with foster mother B.S. M.W. has remained in B.S.'s care as of the date of the permanent custody hearing.

**{¶6}** The following day, September 10, 2009, the magistrate filed an order in which he found that: (1) there was sufficient information to proceed with the hearing; (2) continued placement of M.W. in her home was contrary to M.W.'s welfare and best interest; and (3) reasonable efforts had been made to prevent the removal of M.W. from her home and/or the continued removal from her home. In his findings of fact and conclusions of law, pursuant to R.C. 2151.419, the magistrate specifically found that

[1] FCCS's complaint was subsequently amended to strike the language "and is now residing with J.H., a known drug user."

FCCS made reasonable efforts to prevent the continued removal of M.W., or to return M.W. to her home, by attempting to engage the family in services. The magistrate also found that appellant refused to participate in the services offered by FCCS. Further, the magistrate awarded FCCS temporary custody of M.W. pending further hearing. (Magistrate's order, 1-3.)

**{¶7}** At a hearing on November 18, 2009, FCCS orally amended its complaint, dismissing the neglect cause of action and proceeding uncontested on the dependency cause of action. Further, the magistrate adjudicated M.W. to be a dependent minor as defined by R.C. 2151.04(C). In a judgment entry dated December 1, 2009, the trial court adopted the magistrate's decision adjudicating M.W. to be a dependent minor, granting FCCS temporary custody pursuant to R.C. 2151.353(A)(2), approving and adopting a case plan making the same an order of the court, and referring appellant to drug court. The record indicates that FCCS simultaneously developed a permanency plan as an alternative in the event that the reunification plan failed.

**{¶8}** In order to satisfy the conditions set forth in the case plan, the trial court required appellant to meet the following objectives: (1) participate and complete individual counseling and follow all recommendations; (2) participate and complete a psychological evaluation and follow all recommendations; (3) participate and complete drug and alcohol assessment and follow all recommendations; (4) complete random drug screens; (5) attend, participate and complete family counseling as recommended by M.W.'s therapist and follow all recommendations; (6) participate and complete parenting classes and follow all recommendations; (7) participate and complete home-based services (as appropriate) and follow all recommendations; and (8) sign all releases of information for

FCCS. Appellant and J.H. were present at the hearing and signed/acknowledged the reunification plan which was approved, adopted and ordered by the trial court.

**{¶9}** The reunification plan also included separate conditions for J.W., M.W.'s biological father, and J.H., appellant's fiancé. According to the plan, J.W. had to meet the following objectives: (1) meet with caseworker and follow all recommendations for further assessments; (2) have consistent contact with caseworker; (3) have consistent contact with M.W.; (4) sign all releases of information for FCCS; and (5) keep all appointments and provide information to complete an assessment, homestudy, BCI, and background checks.

**{¶10}** In addition, J.H. had to meet the following objectives: (1) attend, participate and complete drug and alcohol treatment and follow all recommendations; (2) attend, participate and complete family counseling as deemed appropriate and follow all recommendations; (3) complete random drug screens; (4) attend, participate and complete a psychological evaluation and follow all recommendations; (5) sign all releases of information for FCCS; and (6) attend, participate and complete parenting classes and follow all recommendations.

**{¶11}** Further, the reunification plan included a visitation schedule for A.K and J.H. to have weekly, hour-long, supervised visits with M.W. at FCCS.

**{¶12}** On July 7, 2010, FCCS filed a motion for permanent custody pursuant to R.C. 2151.413 and 2151.414. On November 17, 2010, FCCS filed an amended motion for permanent custody pursuant to the same statutes. In its amended motion, FCCS alleged, among other things, that pursuant to R.C. 2151.413(D)(1) and 2151.414(B)(1)(d), M.W. had been in the temporary custody of one or more public children services agencies

or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after Match 18, 1999. Further, pursuant to R.C. 2151.414(D)(1)(a)-(e), FCCS alleged that granting permanent custody to the agency is in M.W.'s best interest. Finally, pursuant to R.C. 2151.414(E)(1), (E)(2), (E)(4), (E)(10), (E)(14), and (E)(16), FCCS alleged that M.W. cannot be placed with either parent within a reasonable period of time or should not be placed with either parent.

**{¶13}** On May 10, 11, 13, and 17, 2011, the trial court heard testimony from witnesses both in favor of and against granting permanent custody of M.W. to FCCS. On behalf of FCCS, the trial court heard testimony from B.S. (M.W.'s foster mother), Katie Eichler (appellant's psychological aide), Parilu Ward (appellant's alcohol and drug counselor at OhioHealth), Dr. Michael Wagner (psychologist who completed appellant's psychological evaluation), Sarah Terstage (FCCS Child Welfare Caseworker III), and Brandon Novosad (Guardian ad Litem to M.W.). FCCS also cross-examined appellant, and appellant further testified on her own behalf. We note that, at the time of the permanent custody hearing, M.W. was 11 years of age.

**{¶14}** Dr. Wagner testified regarding the trial court's order that appellant participate and complete a psychological evaluation and follow all recommendations. The psychological evaluation was ordered to: (1) obtain Psycho-Diagnostic Information, (2) recommend any mental health treatment that appellant may require, and (3) assess appellant's parenting skills. A psychological examination primarily includes: (1) a list of referral questions and issues, (2) a mental status examination, (3) a report of background, (4) relevant historical information, (5) the administration of various psychological tests, (6) a diagnostic formulation, and (7) recommendations for treatment. During appellant's

psychological evaluation with Dr. Wagner, appellant reported having visual hallucinations despite being on Zyprexa, an anti-psychotic medication, a history of self-injurious behavior, a recent suicidal threat, and some symptoms of anxiety, particularly in crowds, but she also reported that her sleep had improved. According to Dr. Wagner's report, appellant made the following statement regarding suicide:

> This way is to do it, cutting lengthwise along the arm. I've tried to hang myself, to cut my throat. The last time was after they took my daughter. I had a gun to my head, and it was my—it was in my mouth; it was loaded and cocked and the bullet went into the ceiling.

(May 11, 2011 Tr. 140.) Dr. Wagner testified that appellant "had a fairly long history of substance abuse and dependence, as well as mental health history, a history of domestic violence, a history of I believe early neglect." (May 11, 2011 Tr. 141.) Appellant was diagnosed with Schizoaffective Disorder, Bi-Polar type on Axis one, P.T.S.D., Opioid Dependence and Cocaine Dependence, as well as on Axis II, not otherwise specified personality disorder. He further testified that appellant has suffered from abuse, domestic violence, repeated inpatient psychiatric stays, poverty and homelessness. Dr. Wagner also stated that appellant suffers from a triad of very serious psychological symptoms: Bi-Polar Disorder, Schizophrenia, and Depression. Further, Dr. Wagner explained appellant's diagnosis as follows:

> A Schizoaffective Disorder in itself represents a—a combination of—of psychotic symptoms and depression symptoms. The Bi-Polar type is also an individual who has symptoms of mania, racing thoughts, pressured speech and so on, which were indicated previously. And I do believe that was a diagnosis given to her during her psychiatric inpatient care. P.T.S.D. is well, you're probably all familiar with that, but essentially, it's a constellation of symptoms that—that tend to occur following exposure to trauma. In her case, domestic

> violence—repeated domestic violence; Opioid Dependence is much like what it says, it's a dependence upon Opioids in various forms, painkillers, heroin and so on, and cocaine dependence is a dependence on cocaine products.

(May 11, 2011 Tr. 153.) Dr. Wagner also stated that, if a person diagnosed with Schizoaffective Disorder, Bi-Polar type opts not to take medication, they would have "[c]ontinued psychotic symptoms, such as auditory and visual hallucinations, mania, periods of depression." (May 11, 2011 Tr. 154.) In terms of treatment, apart from seeing a psychiatrist for medication, Dr. Wagner recommended that appellant participate in (1) outpatient individual counseling, (2) random alcohol and drug testing and submitting to a drug and alcohol assessment to determine what treatment they would recommend to address her opioid dependence and cocaine dependence, and (3) a parent/child observation. Dr. Wagner testified that he had serious concerns about appellant's parenting and functioning "particularly if she was using substances or continued to have untreated mental health conditions." (May 11, 2011 Tr. 157-58.) Sarah Terstage testified that appellant did not follow through with every recommendation from her psychological evaluation because she did not continue taking psychiatric medications and, to the best of Terstage's knowledge, appellant did not share the psychological evaluation with her prescribing doctor. Further, Terstage stated that appellant continued taking the psychiatric medications Ativan and Neurontin, and when questioned by FCCS's attorney, Terstage agreed that appellant is picking which of her mental health diagnoses to treat.

**{¶15}** Parilu Ward testified regarding the trial court's order that appellant participate and complete drug and alcohol assessment and follow all recommendations. She testified that, in 2009, appellant was diagnosed with Poly-substance Dependence,

meaning "there's more than—three or more substances that the person meets criteria for dependence." (May 11, 2011 Tr. 59.) Further, in 2009, OhioHealth accepted appellant into its Suboxone Program. Suboxone is a drug that works just like an opiate, but it does not have side effects or make a person sick like a long-term opiate user who, notwithstanding the dosage of opiates they take, still experiences pain and cravings. Further, the Suboxone Program is medically based for both detox and maintenance and is usually intended for a person who is in withdrawal from opiates and possibly other drugs.

**{¶16}** Ward testified that, in 2009, appellant failed to comply with the Suboxone Program because she did not return for the completion of the assessment, and after three to four visits, "dropped off [the] radar." (May 11, 2011 Tr. 60.) In February of 2011, appellant restarted the Suboxone Program, and her diagnosis of Poly-substance Dependence remained the same. Ward believed that, this time, appellant was motivated to be honest about her drug and alcohol history because she wanted custody of M.W. Once OhioHealth accepts a person into the Suboxone Program, they sign a contract agreeing to certain conditions, including that they: (1) not take Benzodiazepines, (2) attend their appointments, (3) be compliant, (4) take direction, and (5) follow their treatment plan. In addition, they also agree to abstain from alcohol, marijuana, cocaine and any other addictive substances. Ward further testified that, in order to remain in the Suboxone Program, appellant's specific requirements were to: (1) attend three A.A. or N.A. meetings a week, (2) have a sponsor, (3) have daily contact with that sponsor, (4) go to any referrals that are made, (5) stay sober, (6) take medication as prescribed, and (7) drop urine. Ward testified that appellant has been compliant with treatment since

February 1, 2011, with the exception of: (1) not keeping appointments, (2) having one positive urine drop, and (3) failing to enroll in an intensive outpatient treatment program. In addition, Ward testified that she was concerned that appellant did not have a sponsor as of April 5, 2011, because it is a very important part of treatment.

**{¶17}** Further, on May 10, 2011, the trial court conducted an in camera interview of M.W. regarding her understanding of the permanent custody proceedings and her wishes regarding the same. We note that, in the present matter, the in camera interview has not been sealed, and both parties cite to the in camera interview in their briefs. During the in camera interview, the trial court inquired as follows:

> Q: So, [M.W.], do you know why we're here today?
>
> A: Yes.
>
> Q: Okay, why do you think?
>
> A: Because some people told me that it's so I could tell you what I wanted to do.
>
> * * *
>
> Q: * * * Here it's a little different in that Children Services is requesting that the right your parents have to custody that it be ended, and mainly for the purpose of---or one purpose could be for adoption.
>
> A: That's what I want.
>
> Q: Okay. And what do you think adoption means?
>
> A: I never get to see my mom again.
>
> Q: Okay.
>
> A: And I never get to go home.

* * *

Q: Remember living with your mom?

A: Some of it.

Q: What do you remember about that?

A: I remember her beating me sometimes when she got mad, and all the bad times we've had instead of the good.

Q: Okay. What are the good times?

A: Mostly I don't know any that we've had.

* * *

Q: Do you remember going to school?

A: She wouldn't make me.

Q: Okay. Do you think you were allowed to stay home from school sometimes?

A: Yeah.

Q: * * * [D]o you remember your first night in foster care?

A: Yes, I do.

Q: What was that like?

* * *

A: It was scary and I didn't know what was going on.

Q: Okay. Do you remember anything about why that was and why you went to foster care?

* * *

A: It was that my mom was doing drugs and stuff and she was – and my dad was passed out on the chair from doing the same thing as her. And she was in the hospital and she

> made the people that she was friends with make—watch me and they left—left me by myself.
>
> * * *
>
> Q: What do you think it would be like if you lived with your mother?
>
> A: The same thing that happened to me before; it'd be the same way.
>
> Q: Okay. What do you think that means?
>
> A: That she'd still beat me and she'll still yell at me and scream at me and cuss at me.
>
> * * *
>
> Q: Okay. If you were—if you were adopted by [B.S.], what do you think life would be like with [B.S.]?
>
> A: It'd be better than it was with my real mom and I would like it more better than my real—than I was with my real mom.
>
> Q: Okay. Why do you think that?
>
> A: Because, she doesn't treat me like my mom—my real mom did.

(May 10, 2011 Tr. 123-28; 136; 143.)

**{¶18}** On May 25, 2011, the trial court found, by clear and convincing evidence, that granting permanent custody to FCCS was in M.W.'s best interest. On June 15, 2011, appellant filed a timely notice of appeal asserting a sole assignment of error for our consideration:

> The juvenile court's conclusion that Franklin County Children Services should be granted permanent custody of appellant's child was not supported by clear and convincing evidence when the agency never requested any extensions despite the fact that appellant had substantially completed

> her case plan and made significant progress in addressing her issues.

**{¶19}** "It is well recognized that the right to raise a child is an 'essential' and 'basic' civil right." *In re Hayes* (1997), 79 Ohio St.3d 46, 48, citing *In re Murray* (1990), 52 Ohio St.3d 155, 157. "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' " *In re Hayes* at 48, quoting *In re Smith* (1991), 77 Ohio App.3d 1, 16. Accordingly, parents must receive every procedural and substantive protection the law permits. Id. "Because an award of permanent custody is the most drastic disposition available under the law, it is an alternative of last resort and is only justified when it is necessary for the welfare of the children." *In re Swisher*, 10th Dist. No. 02AP-1408, 2003-Ohio-5446, ¶26, citing *In re Cunningham* (1979), 59 Ohio St.2d 100, 105.

**{¶20}** On appellate review, permanent custody motions supported by the requisite evidence going to all the essential elements of the case will not be reversed as against the manifest weight of the evidence. *In re Brown*, 10th Dist. No. 03AP-969, 2004-Ohio-3314, ¶11, citing *In re Brofford* (1992), 83 Ohio App.3d 869. " '[E]very reasonable presumption must be made in favor of the judgment and the findings of facts [of the trial court].' " *In re Brooks*, 10th Dist. No. 04AP-164, 2004-Ohio-3887, ¶59, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. Further, " 'if the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the [juvenile] court's verdict and judgment.' " *In re Brooks* at ¶59. " 'The discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child

should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.' " *In re Hogle* (June 27, 2000), 10th Dist. No. 99AP-944, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316. "An appellate court will not overturn a permanent custody order when it is supported by competent, credible evidence." *In re Siders* (Oct. 29, 1996), 10th Dist. No. 96APF04-413, citing *In re Brofford* at 876-77.

**{¶21}** In her sole assignment of error, appellant argues that the trial court's decision to grant FCCS permanent custody of M.W. is not supported by "clear and convincing evidence" because FCCS never requested an extension of temporary custody even though appellant substantially completed her case plan and made significant progress in addressing her issues. (Appellant's brief, 18.)

**{¶22}** At the outset, we note that, although appellant's sole assignment of error focuses upon FCCS's failure to request an extension of temporary custody, in spite of appellant's alleged substantial completion of her case plan, appellant fails to make any specific legal arguments or cite to any relevant authority, statute, or part of the record regarding this specific issue. As such, with respect to appellant's contention that the trial court's decision is unsupported by "clear and convincing evidence" because FCCS failed to request an extension of temporary custody, appellant has not met her burden of affirmatively demonstrating error on appeal. See App.R. 16(A)(7); see also *In re A.V.,* 10th Dist. No. 05AP-789, 2006-Ohio-3149, ¶10.

**{¶23}** App.R. 16(A)(7) states, in relevant part, that "[t]he appellant shall include in its brief, under the headings and in the order indicated, all of the following: * * * [a]n argument containing the contentions of the appellant with respect to each assignment of

error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." Notwithstanding the foregoing, we shall review this issue as if on the merits.

**{¶24}** In the present matter, as noted earlier, FCCS filed its motion for permanent custody pursuant to R.C. 2151.413 and 2151.414. "R.C. 2151.413 sets forth guidelines for determining when a public children-services agency or private child-placing agency must or may file a motion for permanent custody." *In re S.R.*, 10th Dist. No. 05AP-1356, 2006-Ohio-4983, ¶19.

**{¶25}** R.C. 2151.413(A) states, in relevant part, that:

> A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(2) of section 2151.353 of the Revised Code or under any version of section 2151.353 of the Revised Code that existed prior to January 1, 1989, is granted temporary custody of a child who is not abandoned or orphaned *may* file a motion in the court that made the disposition of the child requesting permanent custody of the child.

(Emphasis added.) Further, R.C. 2151.413(D)(1) states, in relevant part, that:

> Except as provided in division (D)(3) of this section,[2] if a 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, the agency with custody *shall* file a motion requesting permanent custody of the child.

[2] Pursuant to R.C. 2151.413(D)(3), "[a]n agency shall *not* file a motion for permanent custody under division (D)(1) or (2) of this section if any of the following apply: (a) [t]he agency documents in the case plan or permanency plan a compelling reason that permanent custody in not in the best interest of the child[;] (b) [i]f reasonable efforts to return the child to the child's home are required under section 2151.419 of the Revised Code, the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home[;] (c) [t]he agency has been granted permanent custody of the child[;] (d) [t]he child has been returned home pursuant to court order in accordance with division (A)(3) of section 2151.419 of the Revised Code." (Emphasis added.) Appellant has not alleged that any of these (D)(3) exceptions apply. Particularly, appellant has not alleged that, pursuant to R.C. 2151.413(D)(3)(b), FCCS failed to make reasonable efforts to return M.W. safely to her home.

(Emphasis added.)

**{¶26}** "R.C. 2151.415 governs the trial court's disposition of a child after the child has been placed in temporary custody of the children services agency pursuant to R.C. 2151.353(A)." *In re S.W.*, 10th Dist. No. 05AP-1368, 2006-Ohio-2958, ¶35. As one of the six options under R.C. 2151.415(A), that section instructs that:

> *Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is required to be made*, a public children services agency * * * not later than thirty days prior to the earlier of the date for the termination of the [temporary] custody order * * * or the date set at the dispositional hearing for the hearing to be held pursuant to this section, shall file a motion with the court * * * requesting that any of the following orders of disposition of the child be issued by the court:
>
> * * *
>
> (6) [i]n accordance with division (D) of this section, an order for the extension of temporary custody.

(Emphasis added.)

**{¶27}** Finally, R.C. 2151.415(D)(1) sets forth the procedural requirements for filing a motion for an extension of temporary custody, stating that:

> If an agency pursuant to division (A) of this section requests the court to grant an extension of temporary custody for a period of up to six months, the agency shall include in the motion an explanation of the progress on the case plan of the child and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period. The court shall schedule a hearing on the motion, give notice of its date, time, and location to all parties and the guardian ad litem of the child, and at the hearing consider the evidence presented by the parties and the guardian ad litem. The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the

> hearing, by clear and convincing evidence, that the extension is in the best interest of the child, there had been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. In determining whether to extend the temporary custody of the child pursuant to this division, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child pursuant to this division, upon request it shall issue findings of fact.

**{¶28}** In the present matter, FCCS filed its motion for permanent custody on July 7, 2010, prior to M.W. being in the temporary custody of FCCS for 12 or more months of a consecutive 22-month period. As such, pursuant to R.C. 2151.413(A), it was within FCCS's discretion whether or not to file the motion for permanent custody at that time, and it was within FCCS's discretion to request an extension of temporary custody for a period of up to six months pursuant to R.C. 2151.415(A)(6) and (D)(1).

**{¶29}** Nevertheless, the record here indicates that neither FCCS, nor any other party, filed such a motion for an extension of temporary custody.

**{¶30}** Sarah Terstage testified that this case was open from approximately September of 2009 to July of 2010, and "[w]hen case plan services were not completed and there was absolutely no progress made then [FCCS] made the decision to file for permanent custody." (May 17, 2011 Tr. 65.) With respect to FCCS's decision not to file a motion for an extension of temporary custody, Terstage testified that:

> Q: Okay, at what point did the Agency file our original Motion for Permanent Custody?
>
> A: The original motion was filed on July 7, of 2010.
>
> Q: And when was the amended motion filed?

A: November 17, 2010.

* * *

Q: So at that point in time, was the Agency really left with any other option other than filing for permanent custody?

A: Not at that time. There were a lot of concerns, which is the reason why we did file for permanent custody, a lack of participation in all areas of—of the case plan.

Q: But most notably, * * * one of the big factors was the drug and alcohol treatment, is that correct?

A: Yes.

Q: And how long can a case be open with Children Services? How long can we work with—with a parent?

* * *

A: We have a—the initial year of temporary custody and then two possible * * * six month extensions.

Q: And are you aware of how we're able to get an extension?

A: We need to show that the parents or custodians are making progress on their case plan and need to—just need some more time to finish completing treatment, but they have to be in services.

Q: So at the time we filed in July and as well in November, had there been any substantial progress made on the case plan by [appellant]?

A: There had been no progress.

(May 11, 2011 Tr. 295-97.) Based upon this record, we do not find error with the trial court's granting of permanent custody when FCCS never requested any extension of temporary custody.

**{¶31}** Terstage continued to testify regarding appellant's progress subsequent to when the amended motion for permanent custody was filed.

> Q: So would you feel at this point sitting here today in May that given the fact that [appellant] started treatment in February of 2011 that she has made enough progress on her case plan to allow us to continue to work with her until her two years is up?
>
> A: Not—not at this time. I feel P.C.C. would be in the best interest.

(May 11, 2011 Tr. 295-97.)

> Q: How much more progress would [appellant] have to complete for you to extend—extend her time? How much more completion of the case plan—or how much more progress?
>
> A: Complete---or attend, complete the intensive outpatient program, as well as maintain sobriety for the entire time she is in treatment.
>
> * * *
>
> A: * * * [A]nd also be linked with a psychiatrist to manage her medications.

(May 17, 2011 Tr. 66-67.)

**{¶32}** Notwithstanding Terstage's opinion that more progress was needed before FCCS would consider filing a motion to extend temporary custody, even if sufficient progress had been made, FCCS would not have had the discretion to make such a request of the trial court. On November 17, 2010, FCCS filed an amended motion for permanent custody after M.W. had been in the temporary custody of FCCS for 12 or more months of a consecutive 22-month period. Pursuant to R.C. 2151.413(D)(1), because M.W. had been in the temporary custody of FCCS for 12 or more months of a

consecutive 22-month period, FCCS was required, at that time, to file the motion for permanent custody. R.C. 2151.415(A)(6) permits requests for extensions of temporary custody, "[e]xcept for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is *required* to be made." (Emphasis added.) Therefore, FCCS would no longer have discretion to file a motion for an extension of temporary custody pursuant to R.C. 2151.415(A)(6). (See *In re S.W.* at ¶36 for the analogous proposition that "[a]n agency, or any other party to the proceeding, cannot file a PPLA motion [pursuant to R.C. 2151.415(A)(5)] when the court is required to make a permanent custody determination pursuant to R.C. 2151.413(D)(1).")

**{¶33}** We now discuss appellant's actual argument set forth in her first assignment of error regarding the allegation that three of the trial court's factual findings are unsupported by the record. (Appellant's brief, 19-21.) In response, appellee contends that, when applying the facts of this case to the best interest factors set forth in R.C. 2151.414(D)(1)(a) through (e), the evidence establishes that permanent custody is in M.W.'s best interest. (Appellee's brief, 5.) Further, appellee contends that, while one of the three factual findings addressed in appellant's brief is inaccurate, it did not affect the result of the trial. (Appellee's brief, 7.) Prior to addressing appellant's specific argument, we will first discuss the statutory requirements for the trial court to make a best interest determination and whether, in the present matter, the trial court's best interest determination is supported by clear and convincing evidence.

**{¶34}** In order for a juvenile court to properly grant a motion for permanent custody filed pursuant to R.C. 2151.413, the court must follow a two-step approach as delineated by the Supreme Court of Ohio in *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-

6411, ¶9. In that case, the Supreme Court states that, pursuant to R.C. 2151.414(B)(1), the court, after a hearing, may grant permanent custody of a child to FCCS if the court determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency and that any of the factors set forth in R.C. 2151.414(B)(1) apply:

> (a) The child is not abandoned or orphaned, 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, 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 if, as described in division (D)(1) of section 2151.413 the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.
>
> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

**{¶35}** "Clear and convincing evidence is that measure of degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the facts to be established." *In re C.C.*, 10th Dist. No. 04AP-883, 2005-Ohio-5163, ¶49. "It is more than

a mere preponderance of the evidence, but does not require proof beyond a reasonable doubt." Id. "Additionally, the findings of a trial court are presumed correct since, as the trier of fact, it is in the best position to weigh the evidence and evaluate the testimony." Id.

**{¶36}** Here, the record reflects that M.W. has been in the continuous custody of FCCS since September 9, 2009, and the trial court adjudicated the child as a dependent minor on November 18, 2009. FCCS properly filed its amended motion for permanent custody on November 17, 2010, asserting that, pursuant to R.C. 2151.414(B)(1)(d), the minor child has been in the continuous custody of the agency for "12 of 22" consecutive months. Further, appellant does not contest the fact that M.W. has been in the continuous custody of FCCS for "12 of 22" consecutive months. (Appellant's brief, 19.) Therefore, because FCCS met the "12 of 22" requirement set forth in R.C. 2151.414(B)(1)(d), it was not necessary for the trial court to make further findings regarding whether the minor child cannot be placed with either parent within a reasonable time or should not be placed with either parent. See *In re C.C.* at ¶52.

**{¶37}** Having determined that M.W. has been in the continuous custody of FCCS for "12 of 22" consecutive months, we now direct our discussion to the second part of the analysis regarding whether permanent custody is in M.W.'s best interest. In order to make a best interest determination, the trial court must consider all relevant factors, including, but not limited to, the five factors listed in R.C. 2151.414(D)(1):

> (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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;
>
> (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.

**{¶38}** Further, "[a] trial court is not required to specifically enumerate each factor under R.C. 2151.414(D) in its decision." *In re C.C.* at ¶53. "However, there must be some indication on the record that all of the necessary factors were considered." Id. For the reasons summarized in the discussion to follow, we find that, in making its best interest determination, the trial court considered all relevant factors including, but not limited to, the five factors listed in R.C. 2151.414(D).

**{¶39}** First, as to R.C. 2151.414(D)(1)(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, the trial court found that M.W. is bonded with appellant, has no bond with J.W., has no bond with J.H., has no bond with her siblings or relatives, and is very bonded with B.S. (See Permanent Custody

Judgment Entry, 3.) The record clearly supports the trial court's finding that M.W. has bonded with appellant, and that M.W. and B.S. are "very bonded." (Permanent Custody Judgment Entry, 3.) M.W. testified, in camera, that, while she sometimes enjoys her visits with appellant, she wishes to be adopted and remain in B.S.'s care. Further, M.W. testified that her favorite things to do with B.S. are going to movies, swimming and exercising. M.W. also stated that living with B.S. would be better than living with appellant because B.S. does not treat her like appellant did. M.W. testified that she has no bond with J.W. or her siblings. Specifically, M.W. indicated that she never visits her siblings and does not remember them. Also, M.W. stated that she does not remember J.W.

**{¶40}** In addition, Sarah Terstage testified that, if present, J.H. does not actively participate during supervised visitations with M.W. Finally, Terstage stated that M.W. and B.S. have a very good relationship and that M.W. refers to B.S. as "mom." (May 17, 2011 Tr. 15.)

**{¶41}** Second, as to R.C. 2151.414(D)(1)(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, the trial court found that M.W. is 11 years of age, has no developmental disabilities, and wishes to be placed with B.S. Again, the evidence in the record clearly supports these findings because: (1) M.W. testified as to her date of birth, which is March 7, 2000; (2) B.S. testified that M.W. has been diagnosed with Attention Deficit Hyperactivity Disorder, but has no other special needs; and (3) M.W. testified that she wished to be adopted and remain in B.S.'s care.

**{¶42}** Third, as to R.C. 2151.414(D)(1)(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 12 or more months of a consecutive 22-month period, the trial court found that M.W. lived with appellant from birth to September 10, 2009, and that M.W. has been in foster care from September 10, 2009 to the present date. (See Permanent Custody Judgment Entry, 3.) According to the record, M.W. resided with appellant from birth until May of 2006. At that time, appellant went to prison for possession and drug trafficking. During appellant's two-and-a-half-year period of incarceration, M.W. resided with her stepfather, J.K. Appellant testified that, while in prison, she agreed for M.W. to be in the custody of J.K. Further, appellant testified that, upon her release from prison on October 9, 2007, she returned home to J.K. and M.W. M.W. remained in appellant's care until FCCS removed her on September 9, 2009. From September 9, 2009, until at least the date of the permanent custody hearing, M.W. resided with B.S., her foster mother.

**{¶43}** Fourth, as to R.C. 2151.414(D)(1)(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, the trial court found that, because appellant's prognosis for sobriety has been tenuous for at least a few years, secure permanent placement of M.W. cannot be achieved without a grant of permanent custody to FCCS. (See Permanent Custody Judgment Entry, 3.) The record supports this finding because: (1) appellant participated in several drug treatment programs, including OhioHealth's Suboxone Program in 2009, Mary Haven, and Talbot Hall, and, notwithstanding appellant's current Suboxone Program through OhioHealth, did not complete these

programs; (2) in September of 2009, appellant was hospitalized due to a drug overdose of Neurontin and Xanax, which occurred in the lobby of Talbot Hall during a detoxification program; and (3) appellant failed to comply with her drug counselor's recommendation to attend an intensive outpatient program and to find a sponsor as of April 5, 2011.

**{¶44}** Fifth, as to R.C. 2151.414(D)(1)(e), whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child, the trial court found that, pursuant to R.C. 2151.414(E)(10), M.W. was abandoned by J.W., her biological father. The record does support this finding because (1) M.W. testified that she did not remember J.W., and (2) J.W. did not contest the permanent custody proceedings. Further, the trial court found that no evidence was presented as to R.C. 2151.414 (E)(7)(a), (b), (c), (d), and (e), (E)(8), (E)(9), or (E)(11).

**{¶45}** In addition to considering the aforementioned factors, the trial court also considered other factors and, in doing so, made additional findings regarding its best interest determination. As to these additional findings, appellant argues that: (1) the trial court's finding that in-patient treatment was recommended for appellant is inaccurate; (2) the trial court's finding that appellant failed to improve her parenting skills at visitation is not supported by the evidence; and (3) the trial court's finding that appellant failed to establish employment, although accurate, ignores the relevant question of whether appellant had the financial resources to support M.W. (Appellant's brief, 21-22.)

**{¶46}** We agree with appellant that the trial court's finding regarding "inpatient treatment" is inaccurate and not supported by the evidence. The record states that appellant failed to complete an intensive "outpatient program" recommended by Parilu Ward, appellant's drug and alcohol counselor. However, this inaccuracy regarding

"inpatient vs. outpatient" treatment does not prejudice appellant because, either way, appellant clearly failed to meet the recommendation of her drug and alcohol counselor regarding treatment for her addiction. Ward testified that:

> As I recall from the assessment that I did, [appellant's] had four inpatient detoxifications that I know of, none of which were followed by intensive outpatient. There was some intensive outpatient I believe at Maryhaven when she was done with detox there in Feb—or in December of 2010, but she did not complete it, and that level of care is very important when somebody comes through detoxification to go on and get additional treatment in—in an inpatient—in a group setting.

(May 11, 2011 Tr. 72.) Ward indicated that she referred appellant to an intensive outpatient program through the Columbus Health Department; however, appellant did not choose to go there for treatment. In addition, because appellant cancelled her May 3, 2011 appointment with Ward, Ward could not testify regarding whether appellant attended any intensive outpatient counseling prior to the permanent custody hearing.

**{¶47}** Further, there is evidence in the record supporting the trial court's finding that appellant has not improved her parenting skills during visitation. During the in camera interview, M.W. testified that "every day that [appellant] sees me, she cries cause' [sic] I'm not home." (May 10, 2011 Tr. 139-40.) With regard to appellant's crying, M.W. stated that "I really didn't want to see that because it makes me feel like I am guilty of thinking the wrong thing." (May 10, 2011, Tr. 129-30.) M.W. testified that appellant discusses progress on the case plan with her and complains that FCCS keeps "bringing more stuff in for her to do and that she is very mad at [FCCS] because you guys keep giving her more stuff." (May 10, 2011 Tr. 140.) M.W. also indicated that appellant asked her for cigarette money and gift cards from the Dollar Tree and Walmart. Sarah Terstage

further testified that, out of approximately 61 visits offered, appellant missed approximately 26, equating to about one-third of the visits. Terstage stated that she addressed with appellant the issue of sharing inappropriate information with M.W.

**{¶48}** Finally, there is evidence in the record supporting the trial court's finding that appellant failed to establish employment. Appellant testified that she is unemployed and that she applied for supplemental security income benefits in the amount of $726 per month. Although appellant argues that the trial court should have focused on whether she can provide financial support for M.W., appellant admitted to being unemployed. Terstage did testify that, based upon appellant's living arrangements at the time of the hearing, appellant is financially stable. Nevertheless, we do not find error with the trial court determining employment to be a relevant factor in considering best interest and, as noted above, there is evidence in the record to support the trial court's finding.

**{¶49}** In light of the foregoing, we conclude that there was sufficient evidence for the trial court to find by clear and convincing evidence that M.W.'s best interest would be served by granting FCCS permanent custody. Therefore, appellant's sole assignment of error is overruled.

**{¶50}** Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

*Judgment affirmed.*

KLATT and SADLER, JJ., concur.

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