

[Cite as *In re J.M.*, 2016-Ohio-7307.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104030

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**IN RE: J.M. AND G.F., III**

[Appeal by B.F., Mother]

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**JUDGMENT:**  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD 12920167 and AD 12920168

**BEFORE:** McCormack, J., Keough, P.J., and Kilbane, J.

**RELEASED AND JOURNALIZED:** October 13, 2016

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TIM McCORMACK, J.:

{¶1} Appellant B.F., mother of J.M. and G.F., appeals from the juvenile court’s decision granting permanent custody of her children to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “agency”). After a thorough review of the record and applicable law, we affirm the juvenile court’s decision.

### **Procedural History and Substantive Facts**

{¶2} This matter involves the following individuals: the minor children, J.M. and G.F.; their mother, B.F. (“Mother”); G.F.’s father; J.M.’s father, R.C. (“Father”); and Father’s significant other, K.Z. (“Fiancée”).

{¶3} In December 2012, CCDCFS filed a complaint alleging that siblings J.M. and G.F. (ages 3 and 1, respectively, at the time the complaint was filed) were neglected, and the agency requested temporary custody of the children.<sup>1</sup> The complaint stemmed from an incident of domestic violence between the children’s mother, who was pregnant at the time, and G.F.’s father, which the children witnessed. The domestic violence resulted in Mother’s transport to the emergency room. Mother returned to the hospital days later in premature labor; the baby died hours after birth. G.F.’s father was

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<sup>1</sup> The agency’s complaint was filed against the children’s fathers as well as their mother. G.F.’s father has not appeared at any stage of the proceedings. J.M.’s father, R.C., has filed a separate appeal in *In re J.M.*, 8th Dist. Cuyahoga No. 104028. For a more complete recitation of the facts as they pertain to Father, see the decision from this court in Father’s appeal.

subsequently charged with felonious assault as a result of that attack. The children were placed in emergency custody with the agency at this time.

{¶4} In support of its motion for temporary custody, the agency alleged that there were reasonable grounds to believe the children were in immediate danger from their surroundings and removal was necessary to prevent immediate or threatened physical or emotional harm. In support of its allegations, the agency stated that Mother and G.F.'s father have engaged in acts of domestic violence, sometimes in the presence of the children; Mother and G.F.'s father engaged in acts of domestic violence when Mother was 19 weeks pregnant, and as a result of the domestic violence, Mother went into premature labor, and the child died hours after delivery; G.F.'s father is currently in jail, having been charged with felonious assault arising out of the domestic violence incident in December; Mother minimizes the domestic violence; Mother is diagnosed with bipolar disorder but has not consistently followed through with recommended services for her mental illness; Mother's mental illness prevents her from providing safe and adequate care of her children; Mother lacks necessary judgment skills to provide proper care of her children; Mother has anger management issues; the family home has been without electricity for two weeks; G.F.'s father has anger management issues and substance abuse issues that prevent him from providing the proper care of his child; J.M.'s father is currently awaiting trial for charges of domestic violence and felonious assault; and J.M.'s father has failed to visit or communicate with his child on a regular basis.

{¶5} The court appointed guardians ad litem (“GAL”) for Mother and for the children, and a case plan was initiated and subsequently amended. The case plan was amended to include Father, who requested to be considered for placement.

{¶6} The children’s GAL, Dale Hartman, submitted a report based upon his investigation. The GAL reported that the children have special needs; both have witnessed severe and traumatic domestic violence; J.M. shows symptoms of sexual abuse; G.F.’s father is in jail due to charges of felonious assault; J.M. was in counseling/treatment for sexual abuse and plans to reinstate the treatment; Mother was in the process of attempting to obtain housing, employment, retesting for a parenting program recently completed, and mental health treatment. The GAL concluded that temporary custody was in the best interest of the children in order to provide time for Mother to work on her case plan.

{¶7} Following a hearing on the agency’s complaint, J.M. and G.F. were adjudicated neglected and committed to the temporary custody of the CCDCFS. The court found that the agency made reasonable efforts “to prevent removal of the children, to eliminate the continued removal of the children from their home, or to make it possible for the children to return home.” The court further found that services provided to the family, such as parenting education, anger management, domestic violence counseling, and psychological assessment, were not successful, stating that “[a]lthough Mother has made progress on the case plan, it is not sufficient to mitigate the risks \* \* \*.” At this time, the court determined that “Father is not involved.” Finally, the court concluded

that the children's continued residence in the home, or return to the home, would be contrary to their best interests and welfare.

{¶8} In June 2013, the children's GAL reported his concern with J.M.'s past sexual abuse, as well as the foster mother's concerns. He stated that

[I] spoke with the foster mother who said that J.M. was \* \* \* flirting with men and touching her brother and knew too much information of a sexualized nature for a four-year-old. She also had a problem with lying, keeping her hands to herself, and accepting consequences. \* \* \* [I] observed the children at the foster home and became quite alarmed at J.M.'s sexualized behavior. She flirted with [me], she was touching and annoying her brother, and she seemed to have a problem with limits.

He further stated that no appropriate relatives had been found for placement. The GAL concluded that continued temporary custody is in the best interest of the children, and he stated that Mother agreed.

{¶9} In May 2014, the agency moved to modify temporary custody to permanent custody, stating that the children had been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period and permanent custody is in the children's best interests.

{¶10} In April 2015, Father filed a motion for legal custody of both children. He subsequently amended the motion, requesting legal custody of the children to Father or to Fiancée, as an interested individual, in the alternative.

{¶11} Also in April 2015, the children's GAL submitted another report. Based upon his work on the case since the most recent hearing, the GAL reported as follows:

G.F.'s father is out of the picture, having made himself unavailable since April, when warrants were issued for his second felony domestic violence

with Mother. J.M.'s father came into the picture last year after having been out of state for most of the case, avoiding domestic violence warrants.

Mother still has no independent housing, is unemployed and stopped seeing her psychiatrist and counselor since losing her insurance. She is the victim of domestic violence with [G.F.'s father] for the second time. She has a very dependent personality and has not benefitted sufficiently to take care of her children, although she has completed several aspects of her case plan and has benefitted from services.

There are currently no available relatives. J.M.'s father wants legal custody. He does not work and is dependent on his girlfriend who happens to be a very close friend of Mother. His girlfriend supports Father and her own children, takes care of the home, and also takes a very active role in the visits. Although the girlfriend seems suitable, the undersigned does not believe Father could independently take care of the children. Moreover, since Mother and girlfriend are very close \* \* \* [an] unanswered question remains as to whether legal custody would not be a sham to allow Mother, who has not done her case plan and has not show[n] an ability to care for or protect her children, care for the children.

The GAL concluded in his report that unless evidence is presented at trial to satisfy his concerns, permanent custody is in the children's best interest.

{¶12} On July 30, 2015, the court held a dispositional hearing on the agency's motion for permanent custody and Father's motion for legal custody. Michelle Legat, a social worker with the CCDCFs, and Jamie Saunt, an early childhood mental health therapist with Ohio Guidestone, testified on behalf of the agency. Father and Fiancée testified on behalf of Father. Dale Hartman, the GAL for the children, also testified. At the time of the trial, Mother supported Father's motion for custody to either Father or Fiancée.



{¶13} Michelle Legat, the social worker assigned to this matter, testified concerning the case plan for Mother, Father, and G.F.'s father. Legat received the case in November 2014. At this time, the children were already in the temporary custody of the agency, having been placed in emergency custody in December 2012, and a case plan had been established.

{¶14} Legat testified that Mother's case plan objectives included a mental health assessment, a parenting course, domestic violence counseling, provide for the children's basic needs, and obtain employment. Legat testified that Mother made "moderate progress" on her case plan because she had completed the parenting course, received domestic violence counseling, and eventually obtained employment. She stated, however, that Mother failed to benefit. Legat explained that Mother, while pregnant, engaged in a domestic violence fight by going to someone else's home and arguing about an item allegedly stolen from Mother's house. As a result, Mother incurred serious injuries. Additionally, at the time of the trial, Mother was pregnant. The father of this unborn child has a history of substance abuse and domestic violence, and he and Mother engaged in a domestic violence dispute for which she filed charges against him.

{¶15} Legat also testified that Mother has failed to establish stabilized housing and, therefore, has failed to provide for the children's basic needs. Legat stated that Mother has moved multiple times and has lived in three different places since Legat received the case. At the time of the trial, Mother was living in a home that was infested with cockroaches, and Mother informed Legat that she was trying to find another home.

{¶16} With respect to the mental health objective, Legat testified that Mother was previously engaged in mental health services; however, at the time Legat received the case, Mother was not receiving such services. Beginning in March or April 2015, Mother re-engaged in mental health services. Legat stated that Mother “was always unstable” regarding receiving the proper mental health services, and she did not return to services until approximately four to five months after Legat became involved.

{¶17} Legat also testified concerning her observations of Mother’s visits with the children. The visits occurred weekly at a McDonald’s restaurant. She testified that the children have fun at the visits and they show their excitement upon seeing their mother. However, the visits are unstructured, Legat did not witness any bonding during their time together, and Mother does not appear to discipline the children. Rather, Mother has deferred to the foster mother for any discipline. Legat further testified that, although J.M. had previously indicated she would prefer to live with Mother rather than Father and that J.M. is afraid to live with Father because of the number of people staying in the home, both children have expressed their desire to return home with their foster mother, whom the children call “Granny.” Legat stated that when the visits are over, “they’re ready to go to Granny’s. \* \* \* [t]hey want to say goodbye to their mom and they’re ready to go back to their home.”

{¶18} Legat testified that the children have been under Granny’s care since 2012. Legat has observed the children in Granny’s home approximately once per month and weekly at the visits when Granny transports the children to visit with Mother. Legat

stated that the children and Granny have bonded, Granny has addressed the children's needs, and Granny "has been their constant for three years."

{¶19} In comparing the children's relationship with Mother to their relationship with Granny, Legat testified as follows:

[W]hen [they're] at the foster home, it's more structured. They know to do right from wrong, even when [J.M.] messes up, but she doesn't have the meltdown. She knows to do right from wrong. You ask the kids if they're happy there and they \* \* \* love Granny. They want to stay with Granny. They love her.

At the visits [with Mother], it's playtime. It's like during school it's an extra gym class of playing. It doesn't have any structured discipline.

Doesn't have that nurturing piece.

{¶20} Legat further testified that both children receive individual counseling with Guidestone. J.M. receives counseling regarding her previous sexual abuse. Additionally, she has nightmares, she shows symptoms of ADHD, she is "very, very aggressive," especially toward G.F., she has meltdowns, and she receives special education services through school. G.F., Legat stated, has a stuttering problem and also receives special education services through school.

{¶21} While under Granny's care, however, both children are progressing well in their respective therapy. She stated that, initially, G.F. was very quiet and timid, but he is now "coming out of his own." He is becoming more independent. And while he still needs structure, "he's not the quiet little boy like he was" when Legat received the case. Regarding J.M., Legat noted that J.M. has always had "behavioral issues" and

breaks things in the home. Although she still has aggression, Legat stated that J.M. has “quieted down more because of the stability” of the foster home.

{¶22} Regarding Father and Fiancée, Legat stated that Father has ten children in addition to J.M., and Fiancée has five children, one of whom she shares with Father. Legat testified that Father does not provide support for his children. In fact, Father has been found in contempt of court for failing to pay child support for one child, which amount exceeds \$14,000. Additionally, Father has one child in delinquency. This child resides with another family member. Also, Father has been convicted of domestic violence against a daughter and attempted felonious assault against the mother of that child.

{¶23} Legat testified that Father and Fiancée would initially visit J.M. and G.F. together. Typically, Father would stay “in the background, allowing [Fiancée] to take over and it would be like playtime for the kids.” Legat stated that, initially, she was encouraged by their visits; however, Father’s visits later became inconsistent, where he was missing some visits and would arrive late for others, and Fiancée stopped visiting altogether approximately three months prior to trial. Legat noted that the children never inquired about Fiancée after the visits stopped.

{¶24} Finally, Legat testified regarding the potential living arrangements if the children were to reside with Father and Fiancée. She stated that J.M. and G.F. would share the home with Father, Fiancée, and five other children (one of whom Father and

Fiancée are the biological parents). Legat also stated that J.M. would share a room with one of the girls; however, their bedroom adjoined the room of a teenage boy.

{¶25} Legat testified that this was “one of the toughest cases” she has received because the parents are “likeable people” and “they love their kids.” She further testified, however, that “this isn’t a case of heartstrings” and explained that

[t]his is a case of best interest. \* \* \* These kids are in need of stability. They are in need of people who are going to be able to provide their basic needs. They’re not going from house to house. They’re not going to be with someone who you don’t know when they’re going to be there or not. Who’s going to abandon them. Who’s not going to be court ordered by a judge to pay for basic needs.

These are kids that deserve more. They deserve stability. They have had that stability for three years in custody. They deserve it for the rest of their lives.

{¶26} Jamie Saunt, the early childhood mental health therapist who worked with J.M. and G.F. beginning in September 2013, testified regarding the children’s treatment. Saunt stated that when she met G.F., his case was brand new. She completed a mental health assessment and a childhood behavioral checklist. As a result of the assessments, Saunt’s concerns were G.F.’s speech issues, “which made it difficult for him to express himself and be assertive with his sister,” who was acting out sexually with G.F. Saunt also noted that G.F. was “very emotionally reactive” and he “[broke] down and cr[ie]d at everything that didn’t go his way.” Saunt developed a treatment plan to address the “biggest concern” regarding J.M.’s sexualized behavior with her brother and G.F.’s timidity, shyness, and withdrawn behavior.

{¶27} Saunt testified that as a result of his treatment, G.F. was making great progress. He has been better able to express himself and he has been more assertive with his sister in a verbally appropriate manner. Saunt further stated that the children have both learned how to play appropriately together, and the sexualized behavior has not manifested in over a year.

{¶28} Regarding J.M., Saunt noted J.M.'s longer history with the agency, originally beginning in 2011. Saunt testified that when they first met, J.M. was acting out sexually, she was extremely aggressive with her brother, she was very defiant and disrespectful to Mother as well as her foster mother, and she was "really angry." Saunt testified, however, that J.M. is making great progress as a result of her therapy. Saunt noted that the foster mother had initially installed alarms on the doors in order to monitor the children's behavior. Saunt explained that, due to J.M.'s sexualized behavior, the foster mother implemented the alarms in order to prevent J.M. from sneaking into G.F.'s room. Saunt stated that at least one of the alarms has been removed.

{¶29} Saunt also testified concerning the children's visits with Father and Fiancée. Saunt stated that one of the visits was not productive from a therapeutic perspective because "there were too many kids" the children wished to play with. The other children present were Fiancée's children. Saunt testified that J.M.'s and G.F.'s needs required a setting that allows for the individual attention they need and this particular visit was "challenging," due to the number of children present.

{¶30} Finally, Saunt testified that the children are thriving due to the foster mother's involvement: her home is clean and spacious; she has provided the children with a structured, safe, and nurturing environment; and her relationship with the children is "very strong."

{¶31} Dale Hartman, GAL for the children, testified that, based upon the evidence presented at trial and based upon his investigation, permanent custody is in the children's best interest.

{¶32} R.C. testified on his own behalf. He testified that he has lived with Fiancée for almost five years. They plan to marry once his current marriage is terminated. He testified that he has been employed by Fiancée's family-run business as a mechanic for approximately six weeks and that he gets paid "under the table," and therefore, he has failed to provide sufficient documentation regarding his income. Father has admitted to having been incarcerated for more than eight years, to having fled to another state in order to avoid pending warrants issued in this state, to having several child support orders for several children, and to having been late to visits with the children, or missed entirely, due to court involvement with other children.

{¶33} Fiancée testified that she resides in a home with Father and five children. She has two children with special needs. She is aware of the disabilities of J.M. and G.F. and expressed a willingness to care for them; however, she was not aware of the extent of the children's issues or where the children receive services. Fiancée also

admitted that she has a prior criminal conviction for assault that concerned her ex-husband.

{¶34} Following the hearing, the trial court granted the agency's motion for permanent custody. The court found that the children had been in the custody of a public children services agency or private child placing agency for 12 or more months of a consecutive 22-month period, and the continued residence or return to the home of Mother or Father would be contrary to the children's best interests.

{¶35} In support, the court stated as follows:

A case plan was created prior to the adjudication, but Mother had not made enough progress to reduce the risk of harm that caused the initial removal. The case plan required Mother to demonstrate an ability to provide basic needs of her children; employment; complete a parenting course; mental health assessment and follow recommendations; domestic violence counseling and no contact with G.F.'s father.

Mother completed parenting course, [anger management class, domestic violence counseling]; Mother was employed; Mother started mental health services, stopped, then re-engaged in March 2015 at Guidestone; Mother, via the social worker, maintained that her pregnancy was the impetus behind her missing time at Guidestone.

Mother would visit consistently during scheduled times. The social worker commented that during the visits, Mother would, at times, fail to provide structure for the children and a perceived lack of a bond. Yet social worker also stated that the children loved their mother, but would like to live with foster mother.

Social worker only visited the mother's home once. The social worker described it as an older home [and] cockroach infested. \* \* \* There was also an indication that Mother would move to a new home; however, no evidence was provided to suggest that she had an alternative living arrangement. Mother has lived in three different locations prior to the current social worker being assigned the case.



Mother was involved in a physical altercation, despite the fact that she was pregnant. She admitted to the social worker that she had gone to a former roommate's new address and confronted [the individual] about an issue revolving around their old home. The roommate allegedly attacked Mother, causing significant injuries \* \* \*.

The alleged father of the child [with whom Mother] is currently pregnant is an alleged domestic violence perpetrator.

{¶36} As it related to J.M.'s father, the court stated that Father was able to provide proof of stable housing; he provided proof that he could provide basic needs; and he visited with the children. The court noted, however, that Father provided questionable proof of employment; his prior criminal record is "highly likely why he cannot find adequate and consistent employment"; and if the children lived with Father and Fiancée, J.M. and G.F. would be required to share a bed with one of the four other children in the home. The court further noted that Fiancée has four biological children for which she struggles to provide adequate food, shelter, and clothing; she has a prior criminal conviction for assault; and while her initial visits with the children were consistent and frequent, the visits "diminished in both areas for a significant period."

{¶37} The court noted that the children are thriving while in foster care, they prefer to remain with their foster mother, they are progressing in their individual counseling sessions, and the foster mother has established proper barriers and alarms to ensure that J.M.'s prior inappropriate behavior does not manifest. The court then found as follows:

[W]hile having completed domestic violence counseling and parenting, [Mother] did not benefit from those counseling sessions. The latter is

reflected in her pregnancy by an individual who was charged [with] and incarcerated [for] domestic violence. Moreover, Mother was the victim in that assault. Also, Mother's parenting sessions have not produced the expected results wherein she, while pregnant, went to a place to confront a former roommate. Mother knew, or should have known, that by traveling to another's dwelling with a less than favorable attitude could result in a dangerous event that could jeopardize Mother or the yet-to-be-born child's health.

Lastly, there was one provision of the case plan that Mother completely failed to accomplish and that was providing housing and basic needs. She has failed to demonstrate to this court a consistency with respect to employment or housing, and thus, if the children were returned, they, too, would be in a state of flux and inconsistency.

{¶38} As it related to Father, the court found that Father has committed an offense of violence against one of J.M.'s siblings, has not provided sufficient proof of employment, and he is residing in a home that does not have the adequate space to meet the specialized needs of J.M. With respect to Fiancée, the court found that she is not a relative of the children, her irregular visits failed to create a necessary bond with the children, she has a prior criminal conviction for a violent offense, and her residence with Father presents the same challenges for J.M.

{¶39} The court further found that, despite the agency's efforts for reunification, Mother has failed to remedy the reported concerns:

[R]easonable efforts were made to prevent the removal of the [children] from [Mother's] home, or return the [children] to the home, and to finalize the permanency plan, to wit: reunification. Relevant services provided to the family and the reasons those services were not successful were due to

Mother's inability to benefit from the services and her failure to acquire adequate consistent housing.

\* \* \*

Following the placement of the [children] outside the [children'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 [children] to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the [children] to be placed outside the [children's] home.

The parent has demonstrated a lack of commitment toward the [children] by failing to regularly support, visit, or communicate with the [children] when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the [children].

No appropriate relative can be located that was willing to provide for the care and custody of the [children].

{¶40} Mother now appeals the decision of the trial court, assigning two errors for our review.

### **Assignments of Error**

- I. The trial court's decision to award permanent custody to CCDCFS was against the manifest weight of the evidence as it was not supported by clear and convincing evidence.
- II. The trial court erred in granting the motion for permanent custody when there was an interested individual who could provide a legally secure alternative placement option for the minor children.

### **Law and Analysis**

{¶41} In her first assignment of error, Mother argues that the decision to award permanent custody with the CCDCFS was against the manifest weight of the evidence.

{¶42} We note, initially, that parents have a constitutionally protected interest in raising their children. *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 15, citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). That interest, however, is “always subject to the ultimate welfare of the child.” *Id.*, quoting *In re B.L.*, 10th Dist. Franklin No. 04AP-1108, 2005-Ohio-1151, ¶ 7.

{¶43} R.C. 2151.414 sets forth a two-prong analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B). First, it authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that any of the four factors apply: (a) the child is not abandoned or orphaned, but the child cannot be placed with either parent 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; or (d) 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. R.C. 2151.414(B)(1)(a)-(d). *In re J.G.*, 8th Dist. Cuyahoga No. 100681, 2014-Ohio-2652, ¶ 41.

{¶44} The trial court in this case determined that the condition set forth in R.C. 2151.414(B)(1)(d) was satisfied. Regarding each of the minor children, the court found that the children “[have] been in temporary custody of a public children services agency \* \* \* for twelve or more months of a consecutive twenty-two month period.”

{¶45} Where R.C. 2151.414(B)(1)(d), the “12 of 22 provision” applies, the court need not reach any further determination of the two-pronged permanent custody analysis.

*In re J.B.*, 8th Dist. Cuyahoga Nos. 98518 and 98519, 2013-Ohio-1703, ¶ 26. “[A]n agency need no longer prove that a child cannot be returned to the parents within a reasonable time or should not be returned to the parents, so long as the child has been in the temporary custody of an agency for at least 12 months.” *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 21. The reason for removing this requirement is because the “12 of 22 provision” provided in R.C. 2151.414(B)(1)(d) “balance[s] the importance of reuniting a child with the child’s parents against the importance of a speedy resolution of the custody of a child. Through the ‘12 of 22 provision’ in the permanent-custody statutes, the legislature provides parents with 12 months to work toward reunification before an agency can institute a permanent-custody action asserting R.C. 2151.414(B)(1)(d) grounds.” (Citation omitted.) *Id.* at ¶ 22.

{¶46} Although not required, the trial court in this case also found that the children could not be placed with either parent within a reasonable period of time or should not be placed with either parent, in accordance with R.C. 2151.414(B)(1)(a), and it considered the corresponding factors outlined in R.C. 2151.414(E).

{¶47} In the event that R.C. 2151.414(B)(1)(a) applies, and the child is not abandoned or orphaned, but the child cannot be placed with either parent within a reasonable time or should not be placed with the child’s parents, a trial court must consider the factors outlined in R.C. 2151.414(E). *In re R.M.*, 8th Dist. Cuyahoga Nos.

98065 and 98066, 2012-Ohio-4290, ¶ 14. The presence of only one factor will support the court's finding that the child cannot be reunified with the parent within a reasonable time.

*Id.*

{¶48} Such relevant factors include, but are not limited to, the following:

(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;

\* \* \*

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect;

\* \* \*

(16) Any other factor the court considers relevant.

R.C. 2151.414(E).

{¶49} Substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. ““The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child’s removal.”” *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

{¶50} The second prong of the two-part permanent custody analysis provides that if the court finds that one of the four conditions set forth in R.C. 2151.414(B)(1) applies, the court must determine, by clear and convincing evidence, whether permanent custody is in the best interest of the child. *In re E.C.*, 8th Dist. Cuyahoga No. 103968, 2016-Ohio-4870, ¶ 29.

{¶51} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D)(1) mandates that the juvenile court consider all relevant factors, including the following:

- (a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children

services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period \* \* \*;

- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency \* \* \*.
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶52} Only one of the factors enumerated in R.C. 2151.414(D) needs to be resolved in favor of the award of permanent custody in order for the court to terminate parental rights. *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 53; *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

{¶53} Regarding the role of the reviewing court on appeal, we are cognizant that a juvenile court's termination of parental rights and award of permanent custody to an agency is not reversed unless the judgment is not supported by clear and convincing evidence. *In re J.G.* at ¶ 47; *In re: Dylan C.*, 121 Ohio App.3d 115, 121, 699 N.E.2d 107 (6th Dist.1997).

{¶54} "Clear and convincing evidence" is evidence that "will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *In re R.M.*, 8th Dist. Cuyahoga Nos. 98065 and 98066, 2012-Ohio-4290, ¶ 12, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). The evidence must be more than a preponderance, but it does not rise to the level of certainty that is required beyond a reasonable doubt in criminal cases. *Cross*.



{¶55} Here, we find that the trial court satisfied the first prong of the permanent custody analysis. The court found by clear and convincing evidence that the children had been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. The record supports the court's finding.

{¶56} Although not required, the court also determined, under the first prong, that the children cannot be placed with either parent within a reasonable time or should not be placed with the children's parents, and it considered the corresponding statutory factors. The record supports the court's determination.

{¶57} In this case, the evidence shows that Mother has failed continuously and repeatedly to substantially remedy the conditions causing the children to be removed from the home. The children were initially removed from the home due to a domestic violence incident between Mother and G.F.'s father in the presence of the children. Mother lost her baby due to the attack, and G.F.'s father was charged in the incident. Mother received, and completed, domestic violence counseling and parenting classes. However, Mother has failed to benefit from the services. The record demonstrates that Mother continues to engage in incidents of violence. On her own accord, Mother, while pregnant, confronted a former roommate regarding an allegedly stolen item and engaged in a physical altercation as a result of the dispute. In doing so, she incurred serious injuries, and she risked her life and the life of her unborn child. Mother also has engaged in domestic violence with the father of her unborn child, who has a history of substance abuse and domestic violence.

{¶58} Additionally, despite having received mental health services, Mother has failed to consistently engage in mental health treatment. The record shows that she stopped treatment at one point, and she did not re-engage in treatment until March or April 2015, which is approximately four or five months after the current social worker became involved.

{¶59} Finally, Mother has failed to secure consistent and stable housing and, therefore, she has failed to provide for the children's most basic needs. She has lived in three different places from the time the current social worker received the case in November 2014 until the trial in July 2015. And at the time of the trial, Mother was living in a cockroach-infested home.

{¶60} Regarding the second prong of the permanent custody analysis, we find that there was clear and convincing evidence in the record to support the court's determination that awarding permanent custody to the agency was in the children's best interests.

{¶61} The evidence establishes that, although the children love their mother and purportedly enjoy their visits with Mother, Mother fails to provide any discipline or structure for the children, deferring those matters to Granny. Moreover, while a loving relationship is beneficial and important for the children's overall development, "the mere existence of a good relationship is insufficient." *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 86109, and 86110, 2005-Ohio-6633, ¶ 15. Rather, the courts must consider the best interest of the children, and a child's best interests "require permanency and a safe and secure environment," regardless of the relationship with the child. *In re Holyak*, 8th

Dist. Cuyahoga No. 78890, 2001 Ohio App. LEXIS 3105, 10 (July 12, 2001); *see also In re S.C.*, 8th Dist. Cuyahoga No. 102349, 2015-Ohio-2280; *In re J.B.*, 8th Dist. Cuyahoga Nos. 98518 and 98519, 2013-Ohio-1703. And a mother's bond with her children is not weighed more heavily than the other statutory best interest factors. *In re D.J.*, 8th Dist. Cuyahoga No. 88646, 2007-Ohio-1974, ¶ 56.

{¶62} The evidence establishes that the children had been removed from Mother's care for more than 12 months in a consecutive 22-month period, during which time they were under the care of the same foster mother. The foster mother, whom the children call "Granny," has provided a safe, secure, and stable environment, where the children's basic needs are addressed. Mother, on the other hand, has failed to obtain stable, suitable housing for the children for the past several years. "[A] child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security." *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 11, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991). The record in this case demonstrates that Mother is unable to provide such permanent and secure environment. Moreover, Mother supports Father's motions for legal custody of the children.

{¶63} Additionally, although the children love their mother and have, at times, expressed a desire to stay with Mother, the record shows that the children have demonstrated a desire to "[return] home" with Granny, following visits with Mother.

{¶64} The record also demonstrates that the court considered the children's relationship with Father and Fiancée. The evidence shows that while Father loves the children and expresses a desire for custody — either to him or Fiancée, Father has a history of domestic violence, he left the state in order to avoid a warrant on a legal matter, he has several other children that he does not support, his visits with J.M. and G.F. were inconsistent, and his employment with Fiancée's family-run business has not been substantiated. The record also demonstrates that Fiancée has five children, two of whom have special needs, she was not aware of the extent of J.M.'s and G.F.'s special needs, she stopped visiting the children for an extended period of time prior to trial, and she has a record of domestic violence. Moreover, the home in which Father and Fiancée reside does not adequately address J.M.'s specialized needs, and J.M. has stated that she is afraid to live with her father due to the number of people living there.

{¶65} Finally, as it relates to Father, the trial court considered the best interest factor set forth in R.C. 2151.414(D)(1)(e). The record demonstrates that Father has been convicted of domestic violence against his daughter from a previous relationship and attempted felonious assault against the mother of that child.

{¶66} Importantly, the record demonstrates that the children's GAL recommended permanent custody with the agency.

{¶67} In light of the foregoing, we find that the trial court considered the relevant statutory factors. We further find that the trial court's determination that permanent

custody with CCDCFS is in the best interests of the children was supported by clear and convincing evidence.

{¶68} In Mother’s second assignment of error, she argues that the trial court erred in awarding permanent custody to the agency where there was an interested individual who could provide a legally secure alternative placement option for the minor children.

{¶69} As previously discussed, the trial court must consider all of the factors enumerated in R.C. 2151.414(D)(1) in determining a child’s best interests. The availability of alternative placement is one of the “best interest” factors a trial court considers before granting permanent custody. See R.C. 2151.414(D)(4); *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532.

{¶70} When considering an alternative placement, neither “family unity” nor “blood relationship” is controlling. *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 86109, and 86110, 2005-Ohio-6633, at ¶ 15. Nor is the existence of a good relationship. *Id.* R.C. 2151.414 “does not make the availability of a placement that would not require a termination of parenting rights an all-controlling factor, [nor does the statute] even require the court to weigh that factor more heavily than other factors.” *In re Schaefer* at ¶ 63; *In re J.R.*, 3d Dist. Marion Nos. 9-09-05, 9-09-06, 9-09-07, 9-09-08, and 9-09-09, 2009-Ohio-4113, ¶ 21 (no requirement by R.C. 2151.414 that the trial court favor alternate placement over awarding permanent custody).

{¶71} Rather than “the mere existence of a relationship,” the courts are concerned with the best interest of the child. *In re R.N.*, 8th Dist. Cuyahoga No. 83121,

2004-Ohio-2560, ¶ 37, citing *In re Holyak*, 8th Dist. Cuyahoga No. 78890, 2001 Ohio App. LEXIS 3105, at 10. And as previously discussed, this court has determined that a child’s best interests “require permanency and a safe and secure environment,” regardless of the relationship with the child. *In re Holyak*; see also *In re S.C.*, 8th Dist. Cuyahoga No. 102349, 2015-Ohio-2280; *In re J.B.*, 8th Dist. Cuyahoga Nos. 98518 and 98519, 2013-Ohio-1703.

{¶72} Courts will typically conduct one “best interest” review of the trial court’s decision to award permanent custody of the children to the agency. *In re L.C.*, 9th Dist. Summit No. 26816, 2013-Ohio-2799, ¶ 10. Therefore, where the court has determined that permanent custody is in the children’s best interest, legal custody to Father or Fiancée necessarily is not in the children’s best interest. See *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, at ¶ 11, citing *In re L.C.*

{¶73} Here, as discussed above, we have found that the evidence before the juvenile court clearly and convincingly demonstrated that upon consideration of the R.C. 2151.414(D)(1) factors, awarding permanent custody to CCDCFS was in the children’s best interest. Specifically with respect to Father and Fiancée, the record demonstrates that despite their willingness to accept custody of both children, they are not able to provide the children with a safe, secure, and permanent environment. Rather, the evidence supports the trial court’s determination that permanent custody to the agency is in the best interest of the children.

{¶74} In light of the foregoing, we find that the trial court did not err in determining that neither Father nor Fiancée were suitable custodians for J.M. and G.F., and therefore, Mother's second assignment of error is overruled.

{¶75} Judgment affirmed.

It is ordered that 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 Cuyahoga County Common Pleas Court, Juvenile Division, 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.

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TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MARY EILEEN KILBANE, J., CONCUR