

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE: B.P., ET AL. :  
 : Nos. 107732 and 107735  
Minor Children :  
 :  
[Appeal by C.P. and L.P.] :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: July 18, 2019**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD17906533 and AD17906950

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***Appearances:***

Michael E. Stinn, *for appellant C.P.*

Gregory T. Stralka, *for appellant L.P.*

Michael C. O'Malley, Cuyahoga County Prosecutor,  
Michael F. Kulcsar, Michelle A. Myers, and Cheryl Rice,  
Assistant Prosecuting Attorneys, *for appellee.*

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellants L.P. (“Mother”) and C.P. (“Father”) each have appealed the separate judgments of the Juvenile Division of the Cuyahoga County Court of Common Pleas that terminated their parental rights and granted permanent custody of each of the children B.P. and R.P. to the Cuyahoga County Division of

Children and Family Services (“CCDCFS”). This court consolidated the appeals for hearing and disposition, and both parties have filed their own briefs. Upon review of the entire matter, we affirm both judgments.

### **Background**

{¶ 2} B.P. (d.o.b. 6/2/16) and R.P. (d.o.b. 5/1/17) are children of Mother and Father. On October 15 2016, B.P. was removed from his parents’ care after a fire was intentionally set in the family home while B.P. was present. Both parents were criminally charged in connection with the fire incident. Father pled guilty to attempted aggravated arson, vandalism, and child endangering. He was sentenced to a total of 18 months in prison. Mother initially was found incompetent to stand trial; however, after she received treatment to restore competency, she pled guilty to charges of obstruction of justice, vandalism, and child endangering. She was sentenced to two years of community control, and later was incarcerated after violating community control sanctions.

{¶ 3} After the fire incident occurred, CCDCFS filed a complaint for abuse, neglect, and permanent custody of B.P., and the trial court committed B.P. to the emergency temporary custody of CCDCFS on October 17, 2016. The initial complaint was voluntarily dismissed, and a new complaint was filed on April 25, 2017. B.P. was continued in the emergency temporary custody of CCDCFS. Following the birth of R.P., CCDCFS filed a complaint for dependency and permanent custody of R.P. on May 2, 2017, and the trial court committed R.P. to the emergency temporary custody of CCDCFS on May 3, 2017. The complaints were

later amended. The amended complaints referenced the criminal convictions of the parents with regard to the intentionally set fire in the family's home. Also, among other allegations, the amended complaints alleged that Mother has significant cognitive and mental health issues that impede her from providing adequate care for the child, that Father has a mental health condition that affects his ability to provide safe and adequate care for the child, and that both parents had previously mismanaged their income and been unable to independently provide for the basic needs of B.P.

{¶ 4} An adjudication hearing was held on December 4, 2017. Both Mother and Father entered an admission to the amended complaints. B.P. was found to be abused and neglected, and R.P. was found to be dependent. A subsequent hearing was held on December 13, 2017, at which a stipulation was made that reasonable efforts had been made by CCDCFS and the services that had been provided to Mother and Father were set forth.

{¶ 5} A dispositional hearing was held on March 7, 2018, at which the trial court heard testimony and received evidence. On August 27, 2018, the trial court issued a judgment in the case of each child. The trial court made the requisite determinations upon a number of findings that were supported by the record. The trial court granted permanent custody of each child to CCDCFS and terminated the parental rights of Mother and Father.

{¶ 6} Mother and Father separately appealed. This court consolidated the appeals for hearing and disposition.

## **Mother's Appeal**

{¶ 7} Under her first assignment of error, Mother claims the trial court erred by accepting her admission to the amended complaint without first determining the extent of her psychiatric disorder and the effect it had on her ability to understand the consequences of her admission. She argues the same competency standard applied in criminal cases should be applied to an admission in abuse, neglect, and dependency cases. She advocates for application of Crim.R. 11 in the proceedings, without citing any authority to support her argument.

{¶ 8} Initially, we recognize that Juv.R. 4(B)(3) and R.C. 2151.281(C) provide for the appointment of a guardian ad litem to protect the interests of a parent who appears to be mentally incompetent. In this case, Mother was appointed a guardian ad litem and the trial court inquired of the guardian if Mother's agreement to the amended complaint was in her ward's best interest and if Mother "knowingly and voluntarily" entered into the agreement. Mother's guardian ad litem indicated that she "had the opportunity to go over the charges with mom" and that Mother "understands that she's doing this knowingly and voluntarily." The trial court also inquired of Mother concerning her understanding of the admission and the consequences. At no point did Mother, her attorney, or the guardian ad litem raise a concern regarding Mother's competency. Also, although Mother initially was declared incompetent in the criminal proceeding, she received treatment to restore competency and the amended complaint herein reflected that she had entered guilty pleas to vandalism, obstruction of justice, and child endangering.

{¶ 9} Furthermore, we must recognize that Mother’s admission to the amended complaint was entered at the adjudicatory hearing, upon which the trial court adjudicated B.P. to be neglected and abused, and R.P. to be dependent. Those rulings constitute final appealable orders from which no appeal was taken. This court has previously stated the following:

“An adjudication by a juvenile court that a child is ‘neglected’ or ‘dependent’ \* \* \* followed by a disposition awarding temporary custody to a public children services agency \* \* \* constitutes a ‘final order’ within the meaning of R.C. 2505.02 and is appealable to the court of appeals \* \* \*.” *In re Murray*, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990), syllabus. Furthermore, “an appeal of an adjudication order of abuse, dependency, or neglect of a child and the award of temporary custody to a children services agency pursuant to R.C. 2151.353(A)(2) must be filed within 30 days of the judgment entry pursuant to App.R. 4(A).” *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607, ¶ 18. Although the parent still retains the right to appeal any award of permanent custody to a children services agency, that appeal is limited to issues that arose after the adjudication order. *Id.*

*In re S.C.*, 8th Dist. Cuyahoga No. 102611, 2015-Ohio-4766, ¶ 14; *see also In re A.N.F.*, 10th Dist. Franklin No. 17AP-905, 2018-Ohio-3689, ¶ 26. Accordingly, Mother’s first assignment of error is overruled.

{¶ 10} Under her second assignment of error, Mother claims CCDCFS failed to present sufficient evidence to establish that she had a chronic mental illness of such severity to support a decision granting permanent custody. Her argument relates to the trial court’s determination in each case that “the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent” upon finding several factors under R.C. 2151.414(E) to exist.

{¶ 11} R.C. 2151.414(B) provides that permanent custody of a child may be awarded to a children services agency if the court finds, by clear and convincing evidence, that (1) it is in the best interest of the child to grant permanent custody of the child to the agency, and (2) that any of the conditions listed in R.C. 2151.414(B)(1)(a)-(e) apply. Although Mother has not challenged the trial court's best-interest determination, the record reflects that the trial court considered all relevant factors, including those set forth under R.C. 2151.414(D)(1), and we find there is competent, credible evidence in the record supporting the trial court's determination. We focus our review upon the challenge presented, which relates to the trial court's determination under R.C. 2151.414(B)(1)(a).

{¶ 12} CCDCFS moved for permanent custody pursuant to R.C. 2151.414(B)(1)(a), which applies when the following condition is met:

The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private placing agencies for twelve or more months of a consecutive twenty-two-month period \* \* \* *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.*

(Emphasis added.)

{¶ 13} Pursuant to R.C. 2151.414(E), in determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, a trial court must consider all relevant evidence and if the court finds, by clear and convincing evidence, the existence of any one of the factors set forth in R.C. 2151.414(E) as to each of the child's parents, "the court shall enter a

finding that the child cannot be placed within a reasonable time or should not be placed with either parent[.]”

{¶ 14} Mother takes issue with the finding of a chronic mental illness that is so severe that it makes the parent unable to provide an adequate home for the child at the present time and, as anticipated, within one year from the time the court holds the hearing. Mother argues that no expert testimony was offered regarding the extent of her mental health condition and that CCDCFS did not establish that she suffered from a chronic mental illness of such severity that she could not parent a child or provide an adequate home to her children. However, we are unable to conclude that expert testimony is required for a finding under R.C. 2151.414(E)(2), and other courts have reached the same conclusion. *See In re E.S.*, 1st Dist. Hamilton Nos. C-100725 and C-100747, 2011-Ohio-586, ¶ 17-18; *In re Ross*, 11th Dist. Geauga No. 2003-G-2551, 2004-Ohio-3684, ¶ 76-77.

{¶ 15} Our review of the record reflects that Mother was diagnosed with a number of mental health conditions that were listed in the trial court’s decision. Mother’s psychiatric evaluation was introduced. The trial court heard from several witnesses concerning Mother’s ongoing mental health issues, which impacted her daily decision-making and contributed to her failure to obtain housing. The trial court found that Mother was not always compliant with her medications, that she had engaged in concerning behavior, that she had been aggressive and resistant to treatment in December 2017, and that she had expressed an inability to function

without Father because of her reactive detachment disorder. The trial court's determination was supported by competent, credible evidence in the record.

{¶ 16} Even if we were to accept Mother's argument and find this factor was not satisfied, the trial court found a number of other factors listed in R.C. 2151.414(E) to exist. For instance, the trial court found that R.C. 2151.414(E)(1) applies, and the trial court made a number of findings concerning the services provided to Mother and Mother's failure continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. Although Mother did engage in certain services, she had not demonstrated any significant progress in addressing the issues that caused the removal of the children from her care. The record demonstrates that despite the mental health services provided, Mother was not always compliant with her medications and concerns remained regarding Mother's mental health stability, which are detailed in the record. Further, Mother had not demonstrated any significant history of stable housing.

{¶ 17} The trial court also found that R.C. 2151.414(E)(5) and (E)(6) apply. The record established that Mother pled guilty to child endangering under R.C. 2919.22 where the child or a sibling of the child was the victim of the offense, and there was evidence supporting Mother's lack of safety skills, suicide attempts, and the ongoing danger she presents to the children. As stated by the trial court, "Mother loves the children, but is vulnerable and due to her inability to protect herself she



places her children in danger of being harmed.” Also, Mother was incarcerated for the offense after violating her community control sanctions.

{¶ 18} We need not address any further factors under R.C. 2151.414(E) because only one must exist as to each of the child’s parents. Mother’s second assignment of error is overruled.

### **Father’s Appeal**

{¶ 19} Under his first assignment of error, Father claims the trial court abused its discretion in denying his motion for continuance. He argues that he completed the case plan services that were available to him during his incarceration but was not given an opportunity to participate in and complete services that were not available to him during his incarceration. He asserts that he would have been able to complete the services on his case plan before the expiration of the period available for temporary custody.

{¶ 20} We review the trial court’s denial of a motion for continuance for an abuse of discretion. *In re J.C.*, 8th Dist. Cuyahoga No. 106272, 2018-Ohio-2234, ¶ 10. Pursuant to R.C. 2151.414(A)(2), the trial court is to hold the permanent-custody hearing no later than 120 days after the agency files its motion except for “good cause shown” for a reasonable continuance, and the court is to dispose of the motion for permanent custody no later than 200 days after the agency files its motion. Additionally, pursuant to Juv.R. 23, “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.”

**{¶ 21}** By the time of the dispositional hearing, well over 200 days had lapsed since the filing of the motion for permanent custody in each case. B.P. had been in the custody of CCDCFS for over a year, and R.P. had been in custody for over ten months. Although Father desired additional time to engage in case plan services not offered in prison, he was incarcerated because of a crime committed against the child or a sibling of the child. Father waited until the day of the hearing to request a continuance, and he was not due to be released from prison until the following month. Also, the record reflects that Father was represented by competent counsel and that a continuance would have inconvenienced the witnesses, opposing counsel, and guardians ad litem, who were present and ready to proceed with the hearing. After examining the record in this case, we conclude that the trial court properly exercised its discretion in not granting the requested continuance. Father's first assignment of error is overruled.

**{¶ 22}** Under his second assignment of error, Father claims the trial court's decision to grant permanent custody to CCDCFS is against the manifest weight of the evidence. A trial court's decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence as long as the record contains competent, credible evidence by which the court could have found that the essential statutory elements for an award of permanent custody have been established. *In re K.Z.*, 8th Dist. Cuyahoga No. 107269, 2019-Ohio-707, ¶ 82.

**{¶ 23}** Father challenges the trial court's reliance on R.C. 2151.414(E)(1) in support of the determination under R.C. 2151.414(B)(1)(a) that "the child cannot be

placed with one of the child's parents within a reasonable period of time or should not be placed with either parent." However, Father ignores the other factors considered by the trial court. Once again, pursuant to R.C. 2151.414(E), if the court finds, by clear and convincing evidence, the existence of any one of the factors set forth in R.C. 2151.414(E) as to each of the child's parents, "the court shall enter a finding that the child cannot be placed within a reasonable time or should not be placed with either parent[.]" The trial court found several of the factors under R.C. 2151.414(E) to exist.

{¶ 24} Among others, the trial court found to exist the factors set forth in R.C. 2151.414(E)(5), which states "[t]he parent is incarcerated for an offense committed against the child or a sibling of the child[.]" and (E)(7), which states "[t]he parent has been convicted of or pleaded guilty to one of the [listed offenses]." The record reflects that Father was convicted of the offense of child endangering committed against B.P., and he was incarcerated for the offense. Thus, there was competent, credible evidence in the record supporting each of these factors and the trial court's determination under R.C. 2151.414(B)(1)(a).

{¶ 25} In determining the best interest of a child, R.C. 2151.414(D)(1) directs the trial court to consider "all relevant factors," including, but not limited to the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents, and out-of-home providers, and any other person who may significantly affect the child; (2) the wishes of the child as expressed directly by the child or through the child's guardian ad litem, with due regard for the

maturity of the child; (3) the custodial history of the child; (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody; and (5) whether any of the factors set forth in R.C. 2151.414(E)(7) to (E)(11) apply. R.C. 2151.414(D)(1)(a)-(e). In conducting a best-interest analysis under R.C. 2151.414(D), "[t]he court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute." *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56.

{¶ 26} The trial court stated in each decision that it considered the above factors in making its determination, and the record reflects that the trial court considered all relevant factors for the best-interest determination. The testimony and evidence show that Father had not visited with the children because of his incarceration. B.P. had spent the majority of his life in the temporary custody of CCDCFS; R.P. had been in the temporary custody of CCDCFS since shortly after birth; and both children were in need of a legally secure placement. The children were in the same adoptive foster home, were receiving appropriate care, and were bonded with the foster mother. The CCDCFS social worker testified to a number of concerns with Mother and Father. Upon investigation, she found no appropriate relatives available to provide care for the children. The social worker opined that an award of permanent custody to CCDCFS was in the children's best interest. The guardian ad litem for the children discussed the children's needs, her concern with Father's history of fire-setting, and her concerns with regard to Mother. She

recommended that the children be committed to the permanent custody of the agency.

{¶ 27} The trial court made a number of factual findings pertaining to both Mother and Father that were supported by the record. Although Father claims the trial court should have continued temporary custody to allow him the opportunity to engage in and complete case plan services, the best-interest determination focuses upon the child, not the parent. “[A] juvenile court is not required to extend temporary custody if it finds that a child’s best interest would not be served by an extension[.]” *In re Da.B.*, 8th Dist. Cuyahoga No. 105886, 2018-Ohio-689, ¶ 17. There is competent, credible evidence in the record supporting the trial court’s best-interest determination.

{¶ 28} Father’s second assignment of error is overruled.

### **Conclusion**

{¶ 29} Upon our review of the record, we find the trial court’s decision in each child’s case was supported by competent, credible evidence and was not against the manifest weight of the evidence. We affirm the trial court’s decisions awarding permanent custody of each child to CCDCFS and terminating the parental rights of Mother and Father.

{¶ 30} Judgment affirmed.

It is ordered that appellee recover from appellants 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 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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**SEAN C. GALLAGHER, PRESIDING JUDGE**

**PATRICIA ANN BLACKMON, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR**